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A TREATISE

ON THE

FEDERAL INCOME TAX

UNDER THE ACT OF 1913

BY

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AUTHOR OF COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, TREATISES UPON FEDERAL PRACTICE, THE FEDERAL JUDICIARY ACTS OF 1875 AND 1887, REMOVAL OF CAUSES, THE FEDERAL INCOME TAX OF 1894, LIBERTY OF CONTRACT, ATTACHMENT, &C., AND LECTURER ON FEDERAL JURISPRUDENCE AT THE LAW SCHOOL OF YALE UNIVERSITY.

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PREFACE.

The object of this work is to furnish a practical guide for the aid of lawyers, government officials and laymen, in the interpretation and administration of the new law imposing an income tax. The author hopes that it contains all the available material that can be of use to them, including the previous statutes in the United States, analogous statutes in the several States and in Great Britain, the rulings of the Treasury Department under this and the former laws, and a complete digest of the decisions concerning income taxation in cases that have arisen in the United States and in England, Scotland, Ireland, and the British Colonies. The pressure for an adequate treatise upon this subject has been so great that the author has considered that the profession would be better satisfied to receive this now than to await the time necessary for deliberation in order to answer the numerous disputed questions that have already been, or may hereafter be raised under the Act of 1913.

In the preparation of the book, he has used much of the material contained in a treatise on the Income Tax of 1894, which was the result of the joint labors of Mr. Everett V. Abbot, of the New York bar, and of himself. As regards the earlier American cases, he wishes to acknowledge his obligations to the notes on the Revised Statutes by Messrs. Gould and Tucker. In collecting the English authorities, he has been greatly aided by Dowell's Income Tax Laws, especially the Seventh Edition, by John Edwin Piper, Esq.

Liberty Tower, New York, December 16th, 1913.

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THE INCOME TAX OF 1913.

PART I.

COMMENTARIES ON THE STATUTE.

CHAPTER I.

HISTORY OF THE INCOME TAX.

§ 1. **Origin of income tax in America.** The first income tax in the United States appears to have been imposed in the colony of Massachusetts Bay. There, the original land tax was extended into a tax on "estates both real and personal."

The statute of 1646 provided that "for all such persons as by the advantage of their arts and trades are more enabled to help bear the publick charge of common labourers and workmen, as butchers, bakers, brokers, smiths, carpenters, tailors, shoemakers, joiners, barbers, millers, and masons, with all other manual persons and artists, such are to be rated for returns and gains, proportionable unto other men for the produce of their estates." [1]

In 1706, it was imposed on "incomes by any trade or faculty." In 1738, also on incomes derived from "business or employment." The Act of 1777, which is continued in the present Constitution, was extended so as to levy the tax on "incomes from any profession, faculty, handicraft, trade or employment." The present law of Massachusetts is the same, except that the word "faculty" was omitted in 1821, and in 1836, the word "handi-

§ 1. [1] Colonial Records of Massachusetts Bay, II. 173; II. 213, III. 88. Cf. Charters and General Laws of Massachusetts Bay, Edition of 1814, p. 70.

craft," so that it now reads "as tax upon incomes from any profession, trade, or employment." [2]

Other New England colonies seem to have at first followed the custom of Massachusetts, but it subsequently fell among them into desuetude.[3]

§ 2. **History of income tax in Europe.** In Europe the first approach to the income tax appears in some of the mediæval town taxes, where the earnings of artisans and tradesmen were taxed as evidence of their ability to pay proportionally with property and land-owners. Some of the mediæval states also taxed the rents of land, official salaries and professional gains.[1] In England, anciently land was taxed at a percentage of the income which it returned; but personal property was taxed at a percentage of its whole amount. The first general income tax in Europe was imposed by Pitt in 1799 during the Napoleonic wars.[2] On the failure of his "triple assessment" of the tax on expenditures, he introduced and passed an income tax. This required a general return of all incomes; exempted all that were less than £60 a year; and imposed a graduated percentage upon the rest of one one hundred and twentieth part when it was between £60 and £65, with a rise in the scale up to a tax of ten per cent. on an income of £200 and upwards. This rate of ten per cent., experience taught the English Exchequer to regard as "the natural limit of the tax." [3] There were further exemptions to householders with more than two children. Of these, householders with incomes between £60 and £400 had a reduction at the rate of four per cent. for each child; those between £400 and £1,000 at three per cent.; those between £1,000 and £5,000 at two per cent.; and those who had £5,000 and upwards at one per cent. for each child.[4]

The tax was reimposed in 1803 by Addington when the war broke out after the peace of Amiens.[5] This retained the exemption of incomes under £60, and further exempted the incomes of

[2] General Property Tax, by Prof. Edwin R. A. Seligman, 5 Political Science Quarterly, 24, 57–58. The Income Tax, by the same author, 9 Political Science Quarterly, 610–612.

[3] Ibid.

§ 2. [1] General Property Tax, by Prof. Edwin R. A. Seligman, 5 Political Science Quarterly, 24, 57.

[2] 39 Geo. 3, c. 13.

[3] This term was given by Lord Henry Petty Chancellor of Exchequer, Dowell's Income Tax, 3d ed. XXXIII.

[4] Dowell's Income Tax, 3d ed. XXXIII.

[5] 46 Geo. 3, c. 65.

colleges and halls in universities, hospitals, public schools, and alm-houses, friendless societies and charitable institutions.

In 1806 the Coalition Ministry of Grenville imposed a new tax, in which the rate was raised to ten per cent. This statute, which seems to have been drawn by Lord Henry Petty, the Chancellor of Exchequer, was the model of the later legislation upon the subject. It narrowed the exemption of small incomes to £50, and then only when they belonged to laborers, farmers, members of the trades and professions, officers, pensioners, and life annuitants. Laborers and artisans, whose earnings were less than thirty shillings a week, were also exempt from the tax, and an abatement of a shilling on a pound allowed on all incomes between £50 and £150. It contained the other exemptions in the former acts slightly extended in the same direction. This tax continued until April 5, 1816, when Parliament refused to continue it beyond the end of its statutory term.[6]

The second income tax in England was imposed by Peel in 1842.[7] It was drawn by Timm, Solicitor of Stamps and Taxes. It imposed a tax of seven pence upon the pound, but was in other respects substantially a copy of the Act of 1806, with a few insertions such as specific references to gas-works and railways and the tithe commutation rent charge. Since then, an income tax has become a permanent part of British finance. It was extended by Gladstone in 1853;[8] and with few alterations, is the law throughout Great Britain to-day.[9]

Incomes under £150 are exempted under the present income tax, and there are certain other exemptions which are extensions of those in the Act of 1806. Certain abatements are also allowed upon incomes of less than £500.

In Italy an income tax was adopted by Cavour in 1864. In France, the Dixième and Vingtième of the eighteenth century failed of practical enforcement except upon incomes from land. In 1871, however, a tax was imposed on the income of corporations and associations. There is also a tax on the income of land and professions. Such taxes are there described as *impots de quotité.*

[6] 43 Geo. 3, c. 122.
[7] 5 and 6 Vic., c. 35.
[8] 16 and 17 Vic. c. 34.
[9] For a more full account of the English legislation upon this subject see the preface to Dowell's Income Tax Laws.

Income taxes have also been imposed in Prussia since June 24, 1891; in Saxony, in Bavaria, since January 1, 1900; in Wurtenburg, since April 1, 1905; in Austria since January 1, 1908; in the Netherlands, Norway, Spain, Switzerland, Cape Colony; in New South Wales, since January 2, 1896; in New Zealand, Queensland, South Australia, since 1884; in Tasmania and Victoria.[10] Nearly all these taxes are graduated or progressive in their nature. In New Zealand, the tax is limited to incomes in excess of £300.[11]

§ 3. **Income taxes in the several United States.** Among the several United States income taxes are imposed in Massachusetts,[1] Virginia,[2] North Carolina,[3] South Carolina,[4] Tennessee,[5] Wisconsin [6] and Oklahoma; [7] and also in Hawaii.[8] They have been also imposed in Alabama,[9] Louisiana [10] and Missouri.[11]

The Constitutions of Virginia, North Carolina, Tennessee, Texas, and California authorize an income tax. In Virginia, the tax is limited to such annual incomes as exceed $1,000. In North Carolina and Tennessee it cannot be imposed on incomes derived from taxed property.

§ 4. **History of Federal income taxes.** During the war of 1812, a Federal income tax was suggested by Dallas, the

[10] Seligman on the Income Tax, 9 Political Science Quarterly, 610, 614–616.

[11] On page 584, vol. xxvi., of The Congressional Record may be found a tabular account of income taxes in foreign countries, collected by Consuls for the State Department at the request of Congressman Bryan of Nebraska.

§ 3. [1] Mass. G. S. ch. 11, § 4; *Wilcox* v. *Middlesex County Commissioners*, 103 Mass. 544; *Melcher* v. *Boston*, 9 Met. 73. Act of Feb. 28, 1846, § 5.

[2] Va. L. 1898, p. 20; L. 1903, p. 155; L. 1908, p. 20. See *Plumer* v. *Commonwealth*, 3 Gratt. 645.

[3] N. C. L. 1907, ch. 256, §§ 22–25. See *Purnell* v. *Page*, 133 N. C. 125, 45 S. E. 534.

[4] S. C. Civ. Code 1902, §§ 325–331; *Lining* v. *Charleston*, 1 M'Cord, L. 345, a municipal ordinance.

[5] Tenn. Code, §§ 690, 710.

[6] Wisc. Laws of 1911, ch. 658; *Income Tax Cases*, 148 Wis. 456, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913 A, 1147, *infra*, § 8.

[7] Okla. L. 1907, p. 730.

[8] Hawaii Sess. Laws, 1901, No. 20, pp. 31–35. This was *held* to be constitutional in *Peacock* v. *Pratt*, 58 C. C. A. 48, 121 Fed. 772. A former income tax in Hawaii (Act of June 12, 1896) was held to be unconstitutional. *Campbell* v. *Shaw*, 11 Haw. 112.

[9] A tax on gross receipts; Also Revised Code, § 435; *Lott* v. *Hubbard*, 44 Ala. 593.

[10] La. Act of Mch. 19, 1856, Sess. Laws p. 109; *New Orleans* v. *Hart*, 14 La. Ann. 815, *bb. Forman* v. *Board of Assessors*, 35 La. Ann. 825.

[11] Mo. Sess. Acts of 1865, p. 112, Feby. 20, 1865; *Glasgow* v. *Rowse*, 43 Mo. 479.

§ 4. [1] Seligman on the Income

Secretary of the Treasury, and would probably have been adopted had it not been for the peace which immediately ensued.[1] The Direct Property Tax Act of August 5, 1861, also imposed a tax of three per cent. on the excess of all incomes over $800, which, however, was never collected.[2] These provisions of the Direct Property Tax Act were repealed by the Act of July 1, 1862,[3] which imposed an income tax of three per cent. upon the excess of annual incomes between $600 and $10,000 at the rate of five per cent. on the excess when the income exceeded $10,000. The Act of June 30, 1864, increased the rate between $600 and $5,000 to five per cent.; between $5,000 and $10,000 to seven and one half per cent.; and over $10,000 to ten per cent. upon the excess of income over $600.[4] The Joint Resolution of July 4, 1864, imposed a special tax upon the excess of incomes over $600 for the preceding year only.[5]

The Act of March 3, 1865, amended the Act of June 30, 1864, and increased the rate to ten per cent. upon the excess of income over $5,000.[6] The Act of March 2, 1867, repealed the progressive tax and imposed five per cent. on the excess of income over $1,000 until 1870;[7] and in 1870 the Act of July 14 reduced this tax to two and a half per cent. for that year and 1871, when the tax expired and was not re-enacted.[8]

The next was the income tax of two per cent. upon the excess of all incomes over $4,000 and upon the incomes of all corporations, companies, and associations other than partnerships, which was imposed by the Act of August 27th, 1894.[9] This was held to be unconstitutional.[10] The Act of August 5th, 1909, imposed a tax upon the net incomes, over and above $5,000, received by corporations, joint stock companies, or associations organized for profits and having a capital stock represented by shares, and every insurance company, organized in the

Tax, 9 Political Science Quarterly, 610, 613.

[2] 12 Stat. at L., ch. 45, p. 309, §§ 49–51.

[3] 12 Stat. at L., ch. 119, p. 473, §§ 89–93.

[4] 13 Stat. at L., ch. 173, p. 281, §§ 116–123.

[5] 13 Stat. at L., 417.

[6] 13 Stat. at L., ch. 78, p. 479, § 1.

[7] 14 Stat. at L., ch. 169, p. 477.

[8] 16 Stat. at L., ch. 255, p. 257, §§ 6–17.

[9] 28 Stat. at L., 509, chap. 349. Published in full, *infra*.

[10] *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 158 U. S.

United States or organized under the laws of a foreign country and engaged in business in the United States, with certain exceptions.[11] This was held to be constitutional.[12] The Act of September, 1913, imposes a progressive or graduated tax beginning at one per centum upon the net income above $3,000 of individuals; then two per centum upon net incomes between $20,000 and $50,000, three per centum thereupon between $50,000 and $75,000, four per centum thereupon between $75,000 and $100,000, five per centum thereupon between $100,000 and $250,000, six per centum thereupon between $250,000 and $500,000 and seven per centum upon an income above $500,000, and together with a fixed tax of one per centum upon the net incomes of corporations, joint-stock companies or associations and insurance companies; with certain exceptions and exemptions. This last is the subject of this work.[13]

601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, pp. —, § 38; Pierce Fed. Code § 1036.

[11] 36 Stat. at L. 11, chap. 6, U. S. Comp. Stat. Supp. 1911, p. 741, published in full, *infra*.

[12] *Flint* v. *Stone Tracy Co.* 220 U. S. 107, 55 L. ed. 389.

[13] The following shows the chronological history of the A. D. bill of 1913.

January 6 to February 1—Hearings. House Ways and Means Committee.

April 7—Bill introduced by Mr. Underwood and referred to the Ways and Means Committee.

April 22—Bill reported by Mr. Underwood after Democrat caucus had approved it.

May 8—Passed House of Representatives; yeas, 281; nays, 139.

May 9—Received by the Senate and referred to Finance Committee.

June 20—Bill completed by Senate Finance Committee and referred to Democrat caucus.

July 11—Bill reported to Senate by Chairman Simmons with recommendation that it pass.

July 21—Made unfinished business of Senate.

September 9—Passed by Senate: yeas, 44; nays, 37.

September 11—House non-concurs in Senate amendments and bill goes to conference.

September 26—Conferees reach final adjustment.

October 2—Senate agreed to conference report and passed bill as amended.

October 3—House did the same. President signed bill.

CHAPTER II.

CONSTITUTIONAL OBJECTIONS TO THE STATUTE.

§ 5. Constitutional objections which may be raised to the income tax law. The Act imposing the Income Tax of 1894 was held to be unconstitutional as a direct tax not apportioned among the several States in proportion to their inhabitants and consequently obnoxious to the provision of the Federal Constitution concerning direct taxation.[1] On February 25th, 1913, the Sixteenth Amendment to the Constitution of the United States certified as adopted. This ordains: "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."[2] Another objection now may be made, which has not been decided, namely, that the exemption of persons with an income of less than $3,000 is so unreasonable as to make the imposition upon the rest not a tax but confiscation; and consequently unconstitutional as the taking of the taxpayer's property without due process of law.[3] The tax may also be contested as not uniform.[4] Non-residents may claim exemption upon the ground that Congress has no power of extra-territorial legislation.[5] Contractors with States and municipalities, as well as State and municipal employees, may deny the power of Congress to tax their emoluments.[6] It has been contended that the taxation of incomes received before the passage of the Act is unconstitutional.[7] The provision of the Revised Statutes authorizing the Federal courts to punish as a contempt the disobedience to a summons by a collector, may be attacked as not

§ 5. 1 *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 763, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912. For note on constitutionality of income tax generally, see 27 L.R.A.(N.S.) 864.

2 37 St. at L. 1785.

3 *Infra*, §§ 8, 9.

4 *Infra*, § 7.

5 *Infra*, § 10.

6 *Infra*, § 11.

7 *Infra*, § 13.

judicial power, and as consequently a power which cannot be vested in these courts.[8] The provision authorizing a collector thus to examine a taxpayer and to compel the production of his books of account may further be attached as an infringement of the Fifth Amendment of the Constitution, by compelling a person to testify against himself.[9]

These objections will be considered separately.

§ 6. Objections to the constitutionality of the income tax on account of the small numbers of persons affected by it. An objection to the validity of the income tax may be raised because its burden is confined to persons having an income of above $3,000. It thus excludes from its incidence a larger portion of the population of the United States, and is in effect class legislation confined to those who, if not conceded to be wealthy, must at least be admitted to be well-to-do. It may consequently be contended that the tax is a violation of that provision of the Constitution which requires that "all Duties, Imposts, and Excises shall be uniform throughout the United States;" [1] and also to the Fifth Amendment, which provides that no person shall "be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation." The claim is further made that it denies the persons taxed "the equal protection of the laws." But that language is to be found only in the Fourteenth Amendment, which is a limitation upon the powers of the states alone.

§ 7. Uniformity of taxation required by the Constitution. The Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." [1] This provision was not contained in the report to the Federal Convention of the Committee of Detail. In the subsequent discussion in the Convention of the clause granting Congress the power of taxation, McHenry of Maryland and General Pinckney of South Carolina submitted a proposition which gave to the Congress no power to fix ports of entry, except where the State legislature had refused to act upon the subject and re-

[8] *Infra*, § 14.
[9] *Infra*, § 15.
§ 6. [1] Constitution, Article I. § 8.
§ 7. [1] Constitution, Article I, Section 8. See *infra*, § 7.

quired that "all duties, imposts and excises, prohibitions and restraints, laid or made by the Legislature of the United States shall be uniform and equal throughout the United States." These with other propositions were referred to a committee composed of a member from each state.[2] A few days later the committee reported a recommendation of the following clause: "Nor shall any regulation of salaries or revenues give preference to the ports of one state over those of another, or oblige vessels bound to or from any state to enter, clear, or pay duties in another, and all tonnage, duties, imposts and excises laid by the Legislature shall be uniform throughout the United States." [3]

In the discussion upon this recommendation the word "tonnage" was stricken out as comprehended in "duties." [4] "On the question on the clause of the report . . . (and all duties, imposts, and excises, laid by the Legislature, shall be uniform throughout the United States), it was agreed to *nem. con.*" Subsequently, the clause now under consideration was by common consent annexed to the clause concerning the power of taxation with the word "and" changed to "but." [5]

The uniformity in duties, imposts, and excises must exist throughout the whole territory of the United States, including the Territories and the District of Columbia; while in the apportionment of direct taxes Congress has discretion to relieve the Territories or the District of Columbia from such taxation.[6]

It has been said that uniformity of taxation means an equal share in the burdens of the same, and includes not only uniformity in the rate of percentage, but also in the mode of assessment prescribed by law.[7] A tax is uniform under the Constitution of the United States, when it operates with the same force and ef-

[2] Madison Papers, Elliott's Debates, 2d ed. vol. V., p. 479.

[3] *Ibid*, p. 483.

[4] Madison Papers, Elliott's Debates, 2d ed. vol. V., p. 503. In the printed journal, New Hampshire and South Carolina entered in the negative. Madison states that their opposition was confined to the clause which forbade Congress to oblige vessels to enter, clear, or pay duties in another state than that to or from which they were bound. *Ibid*, p. 503.

[5] *Ibid.*, p. 543.

[6] *Loughborough* v. *Blake*, 5 Wheat. 317, 5 L. ed. 98.

[7] *Railroad Tax Cases* (*County of Santa Clara* v. *Southern Pacific R. R. Co.*) 9 Sawy. 165, 18 Fed. 385; *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy. 281, 13 Fed. 147; *County of San Mateo* v. *Southern Pac. R. R. Co.* 8 Sawy. 238, 13 Fed. 722, 735; *Exchange Bank of Columbus* v. *Hines*, 3 Ohio St. 1, 14; *Inhabitants of Cheshire* v. *County Commissioners*, 118 Mass. 386, 28 L. ed. 798, 802, 5 Sup. Ct. Rep. 247.

fect in every place where the subject of it is found.[8] There are, however, dicta in judicial opinions which intimate that this constitutional provision prevents discrimination against individuals as well as against localities.[9]

A tax is uniform which operates with uniformity upon all persons of the same class, engaged in the same trade, or owners of the same property.[10] It has been held that uniformity of taxation exists, although persons holding less than a specified small amount of the property affected are exempted from its operation.[11] Thus, a tax on a bank of all deposits under a specified sum was held uniform. The court there, however, laid stress upon the fact that the tax was in name a tax on the bank and not on the depositors.[12]

§ 8. Invalidation of the tax by the exemptions. A more serious objection arises under the claim that the new law is in

[8] *Head Money Cases*, 112 U. S. 580, 594, per Mr. Justice Miller: "The uniformity here described has reference to the various localities in which the tax is intended to operate. 'It shall be uniform throughout the United States.' Is the tax on tobacco void, because in many of the states no tobacco is raised or manufactured? Is the tax on distilled spirits void, because a few states pay three-fourths of the revenue arising from it? The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation, is uniform, and operates precisely alike in every port of the United States where such passengers can be landed." So held also in *Knowlton* v. *Moore*, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

[9] *Cary* v. *Curtis*, 3 How. 236, 242, 245, 11 L. ed. 576, 579, 581; *German Company Bank* v. *Archbald*, 15 Blatchf. 398, Fed. Cas. No. 5,364; *United States* v. *Singer*, 15 Wall. 111, 121, 21 L. ed. 49, 51. "In the case of the income tax enacted during the war period, seven states in the year 1869—Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Illinois and California—possessed forty per cent of the assessed property of the United States, and had just about forty per cent of the population. But at the same time these same seven states had fully three-fourths of the entire income tax levied by the Federal Government upon the entire country; or, to put it differently, the states which had sixty per cent of wealth and population of the country paid only about one-fourth of the entire tax." Is the Existing Income Tax Law Institutional? by David A. Wells. The *Forum*, January, 1895, p. 541. An ingenious argument that the exemption of agricultural stock or produce consumed by the family of the producer made a law not uniform and so not constitutional, is made by Amasa J. Parker, Jr., in 50 Alb. L. J. 421.

[10] *Head Money Cases*, 112 U. S. 580, 584, 28 L. ed. 798, 800, 5 Sup. Ct. Rep. 247.

[11] *German Savings Bank* v. *Archbald*, 15 Blatchf. 398, Fed. Cas. No. 5,364. See *City of New Orleans* v. *Fourchy*, 30 La. Ann. 910, quoted *infra*, § 8, note 26.

[12] *German Savings Bank* v. *Archbald*, 15 Blatchf. 398, 401, Fed. Cas. No. 5,364.

effect not a tax upon the persons whom it seeks to subject to its operation, but a confiscation of their property. The denomination of a levy as a tax does not make it such.[1] Thus, it has been held that a levy of money by a state, although equally assessed, is not a tax when its proceeds are devoted to private and to public purposes.[2] It has been held also to be an equal essential attribute of a tax that its burden be equally apportioned among the persons or the property which are subjected to it. The Supreme Court of New Jersey said:

"Taxation operates upon a community, or a class in a community, according to some rule of apportionment. When the amount levied upon individuals is determined without regard to the amount or value exacted from any other individual or classes of individuals, the power exercised is not that of taxation, but of eminent domain. A tax upon the persons or property of A., B., and C. individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons, or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation, and not of taxation." [3]

So, the Supreme Court of Kentucky said, speaking through Chief-Justice ROBERTSON: "An exact equalization of the burden of taxation is unattainable and utopian. But still there are well-defined limits within which the practical equality of the Constitution may be preserved, and which, therefore, should be deemed unfavorable barriers to legislative power. Taxation may not be universal, but it must be general and uniform. Thus, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other

§ 8. [1] *Loan Association* v. *Topeka*, 20 Wall. 658, 20 L. ed. 455; *Cheaney* v. *Hooser*, 9 B. Mon. 330; *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy. 238, 13 Fed. 722; *County of Santa Clara* v. *Southern Pac. R. R. Co.* 9 Sawy. 165, 18 Fed. 385; *Lexington* v. *McQuillan's Heirs*, 9 Dana, 513, 35 Am. Dec. 159; *State* v. *Township of Readington*, 36 N. J. L. 66, 70.

[2] *Loan Association* v. *Topeka*, 20 Wall. 655, 20 L. ed. 455; *Lowell* v. *Boston*, 111 Mass. 454, 15 Am. Rep. 39; *Cole* v. *LeGrange*, 113 U. S. 1, 28 L. ed. 896, 5 Sup. Ct. Rep. 416; *Parkersburg* v. *Brown*, 106 U. S. 487, 27 L. ed. 238, 1 Sup. Ct. Rep. 442.

[3] *State* v. *Township of Readington*, 36 N. J. L. 66, 70; quoted with approval in *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy 238, 13 Fed. 722, 735.

ground than that of public service; and, if a tax be laid on land, no appropriated land within the limits of the state can be constitutionally exempted, unless the owner be entitled to such immunity in consequence of public service. The legislature, in the plenitude of its taxing power, cannot have constitutional authority to exact from one citizen, or even one county, the entire revenue for the whole commonwealth. Such an exaction, by whatever name the legislature might choose to call it, would not be a tax, but would be undoubtedly the taking of private property for public use, and which could not be done constitutionally without the consent of the owner or owners, or without restitution of the value in money. The distinction between constitutional taxation and the taxing of private property for public use by the legislative will may not be defensible with perfect precision. But we are clearly of the opinion, that whenever the property of a citizen shall be taken from him by the sovereign will, and appropriated, without his consent, to the benefit of the public, the exaction should not be considered as a tax, unless similar contributions be made by that public itself, or shall be exacted rather by the same public will from such constituent members of the same community, generally, as own the same kind of property. Taxation and representation go together, and *representative responsibility* is one of the chief conservative principles of our form of government. When taxes are levied, therefore, they must be imposed on the public in whose name and for whose benefit they are required, and to whom those who impose them are responsible. And, although there may be a discrimination in the subject of taxations, still persons in the same class, and property of the same kind, must generally be subjected alone to the common burden. This alone is *taxation* according to our custom of constitutional taxation in Kentucky. And this idea, fortified by the spirit of our Constitution, is, in our judgment, confirmed by so much of the twelfth section of the tenth article as declares, 'Nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation of his representatives, and without just compensation being previously made to him.' The object of this great guaranty was to secure every citizen against spoliation by a dominant faction or by a rapacious public power, acting in obedience to the will of a con-

stituent body for whose use his property may be taken, and from whom a similar contribution is required. It intended that public responsibility and the power of exaction for public use should be, in some degree, commensurable, and, therefore, it should be understood as providing that the public shall not take the property of any citizen for its own use without his consent or an equivalent in money or in similar contributions by itself. If this be not its practical effect, it is a mere *brutum fulmen,* and may always be evaded by exactions made in the false semblance of taxation." [4]

In a later case the same court said, speaking through Chief-Justice MARSHALL:

"Conceding to the General Assembly a wide range of discretion as to the objects of taxation, the kind of property to be made liable, and the extent of territory within which the local tax may operate, it is argued, in the opinion referred to, that there must be some limit to this legislative discretion; which, in the absence of any other criterion, is held to consist in the discrimination to be made between what may reasonably be deemed a tax, for which a just compensation is provided in the objects to which it is to be devoted, and that which is palpably not a tax, but which, under the form of a tax, is the taking of private property for public use, without just compensation. If there be such a flagrant and palpable departure from equity, in the burden imposed; if it be imposed for the benefit of others, or for purposes in which those objecting have no interest, and are, therefore, not bound to contribute, it is no matter in what form the power is exercised—whether in the unequal levy of the tax, or in the regulation of the boundaries of the local government, which results in subjecting the party unjustly to local taxes, it must be regarded as coming within the prohibition of the Constitution designated to protect private rights against aggression, however made, and whether under the color of recognized power or not." [5]

"When such exaction is made without reference to common ratio, it is not a tax, whatever else it may be termed; it is

[4] *City of Lexington* v. *McQuillan's Heirs,* 9 Dana, 513, 517.

[5] *Cheaney* v. *Hooser,* 9 B. Mon. 330, 338.

rather a forced contribution, amounting, in fact, to simple confiscation." [6]

An exemption of a certain kind of property either directly or by a law reducing the assessment was held void where the state Constitution required that all taxes be "proportional and reasonable." [7] In Pennsylvania, a statute imposing a license tax upon dealers in real estate transactions whose business was $1,000 or more and exempting those whose business was less, was held to be unconstitutional.[8] There, however, the State constitution provided: "All laws exempting property from taxation, other than the property above enumerated, shall be void." In Hawaii, an income tax which exempted incomes of less than $1,000 and taxed the whole amount of larger incomes was held to be unconstitutional.[9] The court then said:

"The attributes of equality and uniformity inhere, however, to some extent in the very idea of a tax." "The inhibition to tax in any other way than that which accomplishes the result that each member of society bears only his proportion or share of the whole expense of government, does not differ essentially from a provision that taxation shall be equal and uniform. Certainly the taxing of A upon property of the same value as that of B more than the tax laid upon B would be compelling A to pay more than his 'proportion or share' and the taxation would not be 'equal and uniform.' In the light of this reasoning to tax A one per cent. of his entire annual income, if it exceeds the sum of four thousand dollars, and to tax B on only two thousand dollars of his income if the whole does not exceed four thousand dollars, and to impose no tax at all upon C if his income be less than two thousand dollars would be obliging A to pay more than his 'proportion or share' of the tax, and such taxation would not be 'equal and uniform.' To this it is replied that the legislature has the power to exempt from taxation such subjects as it deems proper. But by all the authorities the exemptions must be supported by public considerations and tend to promote the general welfare. Of this character is the exemption from taxation long

[6] Mr. Justice Field, in *County of Santa Clara* v. *Southern Pacific R. Co.* 9 Sawy. 165, 18 Fed. 585, 400.

[7] *Inhabitants of Cheshire* v. *County Commissioners*, 118 Mass. 386.

[8] *Commonwealth, Use of Titusville* v. *Clark*, 195 Pa. 634, 635, 57 L.R.A. 348, 86 Am. St. Rep. 694, 46 Atl. 286.

[9] *Campbell* v. *Shaw*, 11 Haw. Rep. 112, 124.

existing in this country to *every taxpayer* property to the value of three hundred dollars, the obvious purpose being not to tax at all those who are so poor as to possess property of only that value or less. But the statute in question does not exempt from taxation all incomes to the amount of two thousand dollars, but imposes upon him who receives over $4,000 a year a tax of one per cent. upon the whole amount, whereas the person whose income is less than four thousand dollars pays only on the excess of income over two thousand dollars. It is well settled that the legislature has the power to classify "objects of taxation, but it is equally well settled that selections cannot be made out of a class for taxation and others of the same class be exempted. The effect of this section of the Act would be to place the burden of this tax upon those whose annual incomes are over four thousand dollars, and who constitute a minority of the community. It is argued that the exemption of incomes of two thousand dollars is reasonable and in furtherance of a public purpose, because the sum of two thousand dollars is the average annual cost of living of a family. This is a mere supposition and not to be taken for granted as true in our community. But if it be once conceded that exemptions so large as this can be made as a public benefit then exemptions of a much larger amount can be made which might place the whole burden upon the rich and if pushed to an extreme be a confiscation and not the proportional taxation authorized by the Constitution." [10] In accordance with these views is the concurring opinion of Mr. Justice Field in the Pollock case: "Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed uniform. In my judgment, Congress has rightfully no power, at the expense of others, owning property of a like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various States, which advance no national purpose or public interest and exist solely for the pecuniary profit of their members.

[10] *Ibid.*

"Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretence that it is the exercise of the discretion of the legislature to exempt them. Loan Association v. Topeka, 20 Wall. 655, 22 L. ed. 455; Parkersburg v. Brown, 106 U. S. 487, 27 L. ed. 238, 1 Sup. Ct. Rep. 442; Barbour v. Louisville Board of Trade, 82 Ky. 645, 654, 655; Lexington v. McQuillan's Heirs, 9 Dana, 513, 516, 517; and Sutton's Heirs v. Louisville, 5 Dana, 28, 31.

"Cooley, in his treatise on Taxation (2d ed. 215), justly observes that: 'It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation.'

"The income law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the Continentalist), 'the genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands; whatever liberty we may boast of in theory, it cannot exist in fact while (arbitrary) assessments continue.' 1 Hamilton's Works, ed. 1885, 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in

essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the government and more self-respect for himself feeling that though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.

"There is nothing in the nature of the corporations or associations exempted in the present act, or in their method of doing business, which can be claimed to be of a public or benevolent nature. They differ in no essential characteristic in their business from 'all other corporations, companies, or associations doing business for profit in the United States.' Act of August 15, 1894, c. 349, § 32.

"A few words as to some of them, the extent of their capital and business, and of the exceptions made to their taxation:

"1st. *As to mutual savings banks.*—Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. No limit is fixed to the property and income thus exempted—it may be $100,000 or $100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the Comptroller of the Currency, sent by the President to Congress December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted was 646, and the total number of stock savings banks was 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way; and yet the 646 are exempt

and the 378 are taxed. He also showed that the total deposits in savings banks were $1,748,000,000.

"2d. *As to mutual insurance corporations.*—These companies were taxed under previous income tax laws. They do business somewhat differently from other companies; but they conduct a strictly private business in which the public has no interest, and have been often held not to be benevolent or charitable organizations.

"The sole condition for exempting them under the present law is declared to be that they make loans to or divide their profits among their members, or depositors or policy-holders. Every corporation is carried on, however, for the benefit of its members, whether stockholders, or depositors, or policy-holders. If it is carried on for the benefit of its shareholders, every dollar of income is taxed; if it is carried on for the benefit of its policyholders or depositors, who are but another class of shareholders it is wholly exempted. In the State of New York the act exempts the income from over $1,000,000,000 of property of these companies. The leading mutual life insurance company has property exceeding $204,000,000 in value, the income of which is wholly exempted. The insertion of the exemption is stated by counsel to have saved that institution fully $200,000 a year over other insurance companies and associations, having similar property and carrying on the same business, simply because such other companies or associations divide their profits among their shareholders instead of their policyholders.

"3d. *As to building and loan associations.*—The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable institutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, Dayton, Ohio, has a capital of $10,000,000, and Pennsylvania has $65,000,000 invested in these associations. The census report submitted to Congress by the President, May 1, 1894, shows that their property in the United States amounts to over $628,000,000. Why should these institutions and their immense accumulations of property be singled out for the special favor of Congress and be freed from their just, equal, and proportionate share of taxation when others engaged under different names, in similar business, are

subjected to taxation by this law? The aggregate amount of the savings to these associations, by reason of their exemption, is over $600,000 a year. If this statement of the exemptions of corporations under the law of Congress, taken from the carefully prepared briefs of counsel and from reports to Congress, will not satisfy parties interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the Constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any doubt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension. . . . The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a tax.

"This inherent limitation upon the taxing power forbids the imposition of taxes which are unequal in their operation upon similar kinds of property, and necessarily strikes down the gross and arbitrary distinctions in the income law as passed by Congress. The law, as we have seen, distinguishes in the taxation between corporations by exempting the property of some of them from taxation and levying the tax on the property of others when the corporations do not materially differ from one another in the character of their business or in the protection required by the government. Trifling differences in their modes of business, but not in their results, are made the ground and occasion of the greatest possible differences in the amount of taxes levied upon their income, showing that the action of the legislative power upon them has been arbitrary and capricious and sometimes merely fanciful." [11] The subsequent de-

[11] *Pollock* v. *Farmers' Loan & Trust Co.* 157 U. S. 429, 595–599, 600, 39 L. ed. 759, 824–826, 15 Sup. Ct. Rep. 673.

cision which sustained the corporation income tax of 1909 seems inconsistent with these positions.[11a]

The Supreme Court of Wisconsin has held that an inheritance tax was void that exempted estates of less than $10,000 in value.[12]

But taxes upon inheritances, State [13] and Federal,[14] which were progressive in their nature, imposing a larger percentage upon inheritances of greater value, have been sustained, although in one case there was an exemption of an estate worth less than $20,000,[15] and in another there was on exemption of an estate worth $10,000 or less.[16] The Supreme Court then, however, used the following significant language: "The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also some authoritative thinkers, and a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial. The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise, where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual,

11a *Flint* v. *Stone Tracy Co.* 220 U. S. 108, 55 L. ed. 389.

12 *Black* v. *State*, 113 Wis. 205, 90 Am. St. Rep. 853, 89 N. W. 522. For note on classification of inheritances or gifts for purposes of succession tax, see 6 L.R.A.(N.S.) 732.

13 *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; *Naches* v. *State*, 129 Wis. 190, 8 L.R.A. (N.S.) 121, 108 N. W. 627, 9 Ann. Cas. 711.

14 *Knowlton* v. *Moore*, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

15 *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 285, 42 L. ed. 1037, 1039, 18 Sup. Ct. Rep. 594.

16 *Knowlton* v. *Moore*, 178 U. S. 41, 61, 44 L. ed. 969, 977, 20 Sup. Ct. Rep. 747.

even though there be no express authority in the Constitution to do so." [17]

The Supreme Court of Wisconsin moreover held an income tax to be valid which exempted an income of $800 of a wife, of $1,200 of a husband and wife, of $200 of each child under eighteen, and of $200 of each additional person legally and wholly dependent upon the taxpayer for support; giving, however, no exemption to non-residents, nor to firms, corporations or joint stock companies. This was a progressive tax of one per cent. upon the first thousand, steadily increasing with each $1,000 until it reaches the aggregate of six per cent on any sum exceeding $2,000. The Court said: "It is said under this head that the allowance of exemptions to individuals and the denial of them to partnerships is unjust discrimination. The question depends, of course, upon whether there is any valid ground for classification. Is there such a substantial difference between the classes as to reasonably suggest or call for the propriety of different treatment? We are clearly of opinion that this question must be answered in the affirmative. A partnership ordinarily has certain distinct and well known advantages in the transaction of business over the individual, arising from the fact that it allows a combination of capital, brains, industry, and thus makes it possible to accomplish many things which an individual in the same business cannot accomplish. Further than this, however, there is another consideration. If the partner have individual income from other sources than the partnership business (as many do), his exemptions will be allowed to him out of the individual income, and thus, if he were also allowed exemptions from the partnership income, he would be allowed double exemptions. Altogether there seems to be ample reason for the classification. The exemptions themselves do not seem to be seriously attacked, nor do we see any reason they should be. The most striking exemption is that of life insurance to the amount of $10,000 in favor of one legally dependent on the deceased, but while this is somewhat large we cannot say that it is unreasonable, nor that there is not ample ground for classifying legally dependent persons, and extend-

[17] *Knowlton* v. *Moore*, 178 U. S. 41, 109, 110, 44 L. ed. 969, 996, 997, 20 Sup. Ct. Rep. 747.

ing an exemption to them which is denied to others." [18] "Objection is also made to the provision that the income of a wife living with her husband shall be added to the income of the husband, and the income of each child under eighteen years of age living with its parent or parents shall be added to that of the parent or parents. This is another case of classification, and it is only justifiable in case there is some substantial difference of situation which suggests the advisability of difference of treatment. We think there clearly is such a difference, in this, that experience has demonstrated that otherwise there will be many opportunities for fraud and evasion of the law, which the close relationship of husband and wife or parent and child makes possible, if not easy. The temptation to make colorable shifts and transfers of property in order to secure double or even triple exemptions, if there were not some provision of this kind in the law, would unquestionably be very great. There is no such temptation or opportunity in the case of the single man, or the man and wife who are living separately." [19]

The Supreme Court has sustained the provision of a State constitution which provided for the forfeiture of tracts of one thousand acres or more for failure of the owner to place the same upon the land books for taxation, while exempting from such forfeiture tracts with an acreage of less than one thousand acres; [20] and a State tax upon the property of telephone companies which exempted those whose gross receipts did not exceed $500.[21]

It is true that the courts recognize the validity of some exemptions from taxation. Property which is considered to be used in a way beneficial to the community, such as the property of religious or charitable corporations, may be exempted from taxation. So, persons whose means are insufficient to enable them to contribute to the expense of the support of the government may also be exempted.[22] It may well be claimed, however, that the limit of this exemption, although largely

[18] *Income Tax Cases*, 148 Wis. 456, 511, 512, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913 A, 1147.

[19] *Ibid.*

[20] *King* v. *Mullins*, 171 U. S. 404, 435, 43 L. ed. 214, 226, 18 Sup. Ct. Rep. 925.

[21] *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 57 L. ed. —, 33 Sup. Ct. Rep. 833.

[22] *City of New Orleans* v. *Fourchy*, 30 La. Ann. 910.

within the discretion of the Legislature, cannot be so absolutely.

"Absolute equality and uniformity may not be attainable in practice, but an approximation to them is possible, and any plain departure from the rule will defeat the tax." [23] Suppose that Congress should enact a law imposing an income tax upon a single individual, selecting for that purpose the richest man in the United States, or some other. In either case, the courts would undoubtedly hold the attempted imposition not a tax, but a confiscation, and consequently invalid.[24]

Is there any difference in principle between such a law and one which should exempt from liability all persons having less than a specified income, which income was possessed by but one individual in the United States? If such an act would be concededly unconstitutional, upon what distinction rests the validity of a tax law which exempts all individuals having less than a specified income, and includes in the exemption many who are amply able to contribute to the support of the government, so that it is clearly the intention of the law-maker to legislate against specified classes of the community, and to impose upon them more than their fair share of the burden of supporting the government?

If an act is constitutional which exempts all whose annual income is less than $4,000, and taxes those whose income is greater, why might not Congress exempt those with the greater income and confine the tax to those with an annual income less than $4,000? The danger of such legislation is not chimerical, for on the statute books of Arkansas may be found an exemption of those manufacturers and miners whose monthly income exceeds a specified sum.[25]

The questions here suggested are interesting and important, but the writer expresses no opinion as to their ultimate answers.[26]

[23] Mr. Justice Field in *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy. 238, 13 Fed. 722, 734. See, also, *Worth* v. *Wilmington R. R. Co.* 89 N. C. 291, 45 Am. Rep. 679; *Marion R. R. Co.* v. *Champlain*, 37 Kan. 682, 16 Pac. 222.

[24] *Lexington* v. *McQuillan's Heirs*, 9 Dana, 513, 35 Am. Dec. 159, quoted *supra*, cited with approval in *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy. 238, 13 Fed. 722, 734; *County of Santa Clara* v. *Southern Pacific R. Co.* 9 Sawy. 165, 13 Fed. 385, 400.

[25] Arkansas Acts of 1871; Cooley on Taxation, 2d Ed. 171.

[26] In Massachusetts a succession

§ 9. Alleged unconstitutionality of the discrimination against corporations. The act may be further attacked from a similar point of view, because it discriminates against corporations, joint stock companies and associations by taxing all their profits without that deduction of $3,000 which is allowed in the case of individuals. Mr. Justice FIELD and Judge SAWYER, in the San Mateo Tax Case, held the provision of the California Constitution which provided that in estimating their property for the purpose of taxation, railroad and other quasi-public corporations should not be entitled to a deduction of the amount of mortgages, although such deductions were allowed to individuals, to be unconstitutional as an infringement of the Fourteenth Amendment to the Federal Constitution.[1] Mr. Justice FIELD said, speaking of the Fourteenth Amendment:

"The concluding clause of its first section was designed to cover all cases of possible discriminating and partial legislation against any class, in ordaining that no state shall deny any person within its jurisdiction the equal protection of the laws. Equality of protection is thus made the constitutional right of every person; and this equality of protection implies not only that the same legal remedies shall be afforded to him for the prevention or redress of wrongs and the enforcement of rights, but also that he shall be subjected to no greater burdens or charges than such as are equally imposed upon similar property of others, similarly situated, and thus made to bear an unequal share of the public burdens. Property may indeed be classified, and different kinds be subject to different rates. Real property may be taxed at one rate and personal property at another. Property in particular places may be taxed for

tax, which exempted successions of $10,000 or less, was held constitutional. *Minot* v. *Winthrop*, 162 Mass. 113, 26 L.R.A. 259, 38 N. E. 512. See, however, the strong dissenting opinion of Judge Lathrop.

In Louisiana an exemption of personal property worth $500 was held not to be a violation of the requirement of uniformity under the State Constitution. *City of New Orleans* v. *Fourchy*, 30 La. Ann. 910 (1878), Spencer, J. The court avoided the question whether an exemption of $1,000 income was constitutional because there was no proof that such exemption was in fact allowed. "True there was a law of the state authorizing and directing such exemption, but *non constat* that the city did so, especially if the doing so would be unconstitutional."

§ 9. [1] *County of San Mateo* v. *Southern Pacific R. R. Co.* 7 Sawy. 517, 13 Fed. 145; *County of Santa Clara* v. *Southern Pacific R. R. Co.* 9 Sawy. 165, 18 Fed. 385.

local purposes, while property situated elsewhere is exempt. Licenses may also vary in amount, according to the calling or business for which they are exacted. But arbitrary distinctions not arising from real differences in the character or situation of the property, or which do not operate alike upon all property of the same kind similarly situated, are forbidden by the amendment. Equality in the imposition of burdens is the constitutional rule as applied to the property of individuals, where it is subject to taxation at all; and this imports that a uniform mode shall be followed in the estimate of its value, and that the contribution exacted shall be in some uniform proportion to such value prescribed, according to the nature or position of the property. All state action, constitutional or legislative, impinging upon the enforcement of this rule, must give way before it.[2]

"The Fourteenth Amendment of the Constitution, in declaring that no statute shall deny to any person within its jurisdiction the equal protection of the laws, creates a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. Whatever the state may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security under them to every one on similar terms, in his life, his liberty, his property, and in the pursuit of happiness. It implies not only accessibility by him, on the same terms with others, to the courts of the country for security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also an exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances.

"Unequal exactions in every form, or under any pretence, are absolutely forbidden; and, of course, unequal taxation, for it is in that form that offensive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws, where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the

[2] *County of San Mateo v. Southern Pacific R. R. Co.* 7 Sawy. 517, 13 Fed. 145, at pp. 150, 151.

same kind, similarly situated, at different rates; where, for instance, one may be taxed at one per cent. on the value of his property, another at two or five per cent. or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property.[3] As the foundation of all just and equal taxation is the assessment of the property taxed, that is, the ascertainment of its value, in order that the tax may be estimated according to some ratio to the value, uniformity of taxation necessarily requires uniformity in the mode of assessment, as well as in the rate of taxation, or, to quote the language of the Supreme Court of Ohio expressing the same thought: 'Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.' (Exchange Bank of Columbus v. Hines, 3 Ohio St. Rep. 1)" [4]

In a later case the Supreme Court of the United States said, speaking through the same Justice:

"The amendment does not prevent the classification of property for taxation, subjecting one kind of property to one rate of taxation, and another kind of property to a different rate—distinguishing between franchises, licenses, and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it. And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected." [5]

The Revised Statutes provide that "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to

[3] *County of San Mateo* v. *Southern Pacific Railroad Company*, 8 Sawy. 238, 13 Fed. 722, at page 733.

[4] *County of San Mateo* v. *Southern Pacific R. R. Co.* 8 Sawy. 238, 13 Fed. 722, at page 733.

[5] *Home Insurance Co.* v. *New York State*. 134 U. S. 594–606, 33 L. ed. 1025–1029, 10 Sup. Ct. Rep. 593.

sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." [6]

In sustaining the Wisconsin income tax, the Supreme Court of that state said:

"Much complaint is made of that part of sec. 1087*m*—6 which provides a different rate of taxation for the income of corporations from the rate prescribed for individuals, and this also is said to be unjust discrimination. Again the question is whether there be substantial difference of situation between individuals and corporations which suggest and justify this difference in treatment, and again it seems that the answer must be Yes. The corporation is an artificial creation of the state endowed with franchises and privileges of many kinds which the individual has not. It might be said with truth that the clause could be justified on the ground that it is an amendment to every corporate charter, which the legislature has the undoubted right to make, but it is not necessary to rely on that proposition. The corporate privileges, which are exclusively held by corporations, and the real differences between the situation of a corporation and an individual, among which may be mentioned the fact that the corporation never is obliged to pay an inheritance tax, plainly justify a difference of treatment in the levying of the income tax. Were the income tax a tax upon property, there could be no difference in rate, for taxation of property must still be on a uniform rule, but, as has been heretofore noted, it is not a tax upon property within the meaning of our constitution." [7]

Neither the Fourteenth Amendment nor any part of the Revised Statutes are, of course, directly binding upon Congress. They may, however, perhaps be considered as some evidence of the opinions of the American people upon those limits to legislative powers which are said to be necessarily implied in all constitutional governments irrespective of the express provisions of a written Constitution.[8]

[6] U. S. Rev. Stat. § 1977, U. S. Comp. Stat. 1901, p. 1259.

[7] *Income Tax Cases*, 148 Wis. 456, 134 N. W. 673, 135 N. W. 164.

[8] *Loan Association* v. *Topeka*, 20 Wall. 658, 22 L. ed. 459.

§ 10. Constitutional objections to extra-territorial taxation. The act provides for the levy of the income tax, "upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States though not a citizen thereof * * * and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere." [1] It may be claimed that so much of this tax as affects non-residents is invalid as extra-territorial taxation.[2] This claim, however, seems to be without support. There are dicta of the Supreme Court of United States, which have been claimed to support the doctrine that the States have no power of extra-territorial taxation.[3] A critical examination of these cases, however, will show that the acts in question were held void, because in one case, the statute, passed subsequent to an indebtedness by a domestic corporation to a citizen of another State, authorized the corporation to deduct from the interest which he promised to pay to such creditor the amount of the tax paid to the State, and thus impaired the obligation of its contract; [4] and in another because the tax discriminated against citizens of other States; [5] and in a third because it was held to be an unreasonable regulation of the right to maintain a railroad in the taxing State to oblige a foreign railroad company to collect a tax out of the interest due at its home office without the State to residents of such State, and to be, moreover, an impairment by the State of the obligation of its contract by which it first admitted the foreign railroad.[6] The Supreme Court has held that a State may compel one of its own citizens to pay a tax upon personal property, such as mortgages executed and secured by a lien in another State,[7] and upon the bonds of another State exempted by

§ 10. [1] Act of Oct. 3, 1913, subsection A, subd. 1.

[2] *State Tax on Foreign-held-Bonds*, 15 Wall. 300, 21 L. ed. 179; *Ward* v. *Maryland*, 12 Wall. 418, 428, 20 L. ed. 449, 452.

[3] *N. Y. L. E. & W. R. R. Co.* v. *Pennsylvania*, 153 U. S. 628, 38 L. ed. 846, 14 Sup. Ct. Rep. 952.

[4] *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179.

[5] *Ward* v. *Maryland*, 12 Wall. 421, 428, 20 L. ed. 449, 452.

[6] *N. Y. L. E. & W. R. R. Co.* v. *Pennsylvania*, 153 U. S. 628, 38 L. ed. 846, 14 Sup. Ct. Rep. 952.

[7] *Kirkland* v. *Hotchkiss*, 100 U. S. 491, 25 L. ed. 558.

the latter from taxation.[8] Whatever may be the limitations upon the power of the States in this respect, the taxing power of the United States is not thus limited.

Congress may tax all persons within the United States and all property within the United States, whether owned by residents or non-residents, including debts due by residents of the United States to non-resident aliens, which may be collected from the debtor under a statute authorizing him to deduct the amount of the tax from the sum due his debtor.[9] This last power is not possessed by the several States.[10]

[8] *Bonaparte* v. *Appeal Tax Court of Baltimore,* 104 U. S. 592, 26 L. ed. 845.

[9] In this statement the writer has followed the opinion of Mr. Justice Bradley, with whom Mr. Justice Harlan concurred, in *United States* v. *Erie Railway Company,* 106 U. S. 327, Appendix, pp. 703–705, 27 L. ed. 151, 153, 154, 1 Sup. Ct. Rep. 223, since he considers the reasoning, on which the opinions of the court in that case and *Railroad Company* v. *Collector,* 100 U. S. 595, 25 L. ed. 647, are based, inconsistent with the case, holding that states have no power to impose such taxation. The question at bar was the construction of that section of the Income Tax (§ 122 of the Act of June 30, 1864, Chapter 173, as amended by the Act of July 13, 1866, Ch. 184), which taxes railroad and other transportation companies upon dividends and interest for money loaned on the security of bonds or other evidences of interest to the amount of five per cent. and authorized such corporations to deduct and withhold from all payments on the account of any interest, or coupons, or dividends due and payable as aforesaid, the state tax, providing that the payment of the tax "should discharge said company from that amount of dividend, or interest, or coupon on the bonds, or other evidence of their indebtedness so held by any person or party whatever; except where said companies may have contracted otherwise." In *Railroad Company* v. *Collector,* 100 U. S. 595, 598–599, 25 L. ed. 647, 648, the Supreme Court unanimously, in an opinion delivered by Mr. Justice Miller, sustained the taxation on the following grounds: "The tax, in our opinion, is essentially an excise on the business of the class of corporations mentioned in the statute. The section is a part of the system of taxing incomes, earnings, and profits adopted during the late war, and abandoned as soon after that war was ended as it could be done safely. The corporations mentioned in this section are those engaged in furnishing road-ways and water-ways for the transportation of persons and property, and the manifest purpose of the law was to levy the tax on the net earnings of such companies. How were these 'earnings, profits, incomes or gains' to be most certainly ascertained? In every well-conducted corporation of this character these profits were disposed of in one of four methods: namely, distributed to its stockholders as dividends, used in the construction of its roads or canals, paid out for interest on its funded debts, or carried to a reserve or other fund remaining in its hands. Looking to these modes of distribution as the surest evidence of the earnings which Congress intended to tax, and as less liable to evasion than any other, the tax is imposed upon all of them. The books and records of the company are thus made evidence of the profits they have made, and the corporation itself is made responsible for the payment of the tax. Manifestly such a mode of ascertaining the net earnings of the company

would not be complete unless the sums paid as interest on their bonded debts were taken into the account. Of course it was competent for Congress to tax only the earnings after *deducting* this interest paid on their debt, or to treat the sum so paid as part of the net earnings, and paid out of them as dividends were. It adopted the latter policy. It results from this course of observation that the tax was not laid on the bondholder who received the interest, but on the earnings of the corporation which paid the interest. It is very true that the act went further, and declared that, except when the company had contracted otherwise, it might deduct this tax from the amount due the bondholders. And where the bondholder was subject to congressional legislation, by reason of citizenship, residence, or *situs* of the property taxed, it was within the lawful power of Congress so to do. Whether, as a question of international law, this declaration would relieve the corporation from the obligation to pay its foreign bondholders the full sum for which it contracted, we need not discuss: for this court, on all such subjects, is bound by the legislative and political departments of its own government. The tax is laid by Congress on the net earnings, which are the results of the business of the corporation, on which Congress has clearly a right to lay it; and being lawfully assessed and paid, it cannot be recovered back by reason of any inefficiency or ethical objection to the remedy over against the bondholder." In this case, which involved but a small amount, there was no dissent. In a subsequent case of *United States* v. *Erie Railway Co.* 106 U. S. 327, 330, 27 L. ed. 151, 153, 1 Sup. Ct. Rep. 223, which involved a large amount, a majority of the court based their decision on the authority of the former case without further reasoning. Mr. Justice Field, who had concurred in the former judgment, in a strong dissenting opinion demonstrated that the tax was in effect upon the bondholders and not upon the corporation; and argued that "There are limitations upon the powers of all governments, without any express designation of them in their organic law; limitations which inhere in their very nature and structure, and this is one of them,—that no rightful authority can be exercised by them over alien subjects, or citizens resident abroad, or over their property there situated. The concurring opinion of Mr. Justice Bradley, with whom Mr. Justice Harlan agreed, is contained in the Appendix of that volume at pp. 703–705, 27 L. ed. 153, 154, 1 Sup. Ct. Rep. 223, which is as follows: "I concur in the judgment of the court in this case, but not for the reasons given in *Railroad Company* v. *Collector*, 100 U. S. 595, 23 L. ed. 647. I concurred in the judgment in that case, as in this, on grounds essentially different from those given by the court. I always regarded the tax which, by the one hundred and twenty-second section of the Internal Revenue Act of 1864, was laid upon the interest payable on the bonds and upon the dividends declared on the stock of railroad and other corporations, as a tax on the incomes *pro tanto* of the holders of such bonds and stock. *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 333, 22 L. ed. 348, 351; *Railroad Company* v. *Rose*, 95 U. S. 78, 24 L. ed. 376. The interest payable on bonds was not a tax upon the companies in respect of a debt owed by them, nor upon the property represented thereby. The property obtained by the proceeds of the loans represented by the bonds was taxable (if not taxed) in another form, and consisted of the railroad tracks or canal, and other specific property of the companies respectively. If taxed directly, it was indirectly by means of the duty of two and a half per cent. which was laid on their gross earnings. The tax laid upon their bonds was intended to affect the owners of them; and whilst the companies were directed to pay it, they were authorized to retain the amount from the instalments due to the bondholders, whether citizens or aliens. The objection that Congress had no power to tax non-resident aliens is met by the fact that the tax was not assessed against them personally, but against the *rem*, the

Congress has the power to compel a resident of the United States to pay a tax upon property owned by him which is situated in a foreign country and upon which he pays taxes there.[11]

§ 11. Constitutionality of Federal tax upon state officers, employees, and contractors, State or municipal bonds

credit, the debt due to them. Congress has the right to tax all property within the jurisdiction of the United States, with certain exceptions not necessary to be noted. In this case, the money due to non-resident bondholders was in the United States,—in the hands of the company,—before it could be transmitted to London, or other place where the bondholders resided. Whilst here, it was liable to taxation. Congress, by the internal revenue law, by way of tax, stopped a part of the money before its transmission, namely, five per cent. of it. Plausible grounds for levying such a tax might be assigned. It might be said that the creditor is protected by our laws in the enjoyment of the debt; that the whole machinery of our courts and the physical power of the government are placed at his disposal for its security and collection.

"Whether taxation thus imposed would be respected by foreign governments if the creditor could bring before their courts the debtor company or its property, does not concern us in considering the question now presented. There is nothing in the Constitution which authorizes this court, or any other court, to disaffirm the power of Congress to lay the tax. Congress is its own judge of the propriety or expediency of laying it.

"Indeed, so far as the power of Congress is concerned, regarded in reference to any power the courts have to limit or restrain it. I see no reason why Congress may not lay a tax upon any property on which the government can lay its hands, whether within or without the jurisdiction of the United States. If, in imitation of the dues levied by Denmark upon vessels passing through the Cattegat Sound, Congress should levy a duty upon all vessels passing through the strait of Florida, I do not know of any power which the courts possess to prevent it. It might create complications with foreign governments, it is true, and involve the country in war; but Congress has the power, if it chooses to take the responsibility, of creating, or giving occasion to such complications. The responsibility rests upon it alone.

"So if, in taxing money due from the citizens of the United States to foreign citizens, any complications arise with the governments to which the latter are subject, Congress alone has the responsibility, and is the only department of our government which has a right to take such a responsibility. In *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179, the state legislature had laid a tax on the interest payable upon the bonds of all corporations doing business in the state; and authorized the companies to retain the amount out of the interest payable to the bondholders without regard to their residence or nationality. I concurred in the judgment rendered in that case on the ground that the state, in passing such a law, applicable to pre-existing contracts, exceeded its just powers under our form of government, and that the law, in its effect upon non-resident bondholders, impaired the obligation of the contract.

"Considering, therefore, that if Congress chooses to take the responsibility of levying such a tax as the one in question, the courts have no power to control its action, or to give any relief to parties affected by it, I concur in the judgment of reversal."

[10] *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179.

[11] *Kirkland* v. *Hotchkiss*, 100 U. S. 491, 25 L. ed. 558.

and State corporations. Whether the Sixteenth Amendment authorizes the taxation of incomes from state and municipal bonds is a disputed question. In a special message to the legislature of the State of New York on January 25th, 1910, Governor Hughes (now a justice of the Supreme Court) said: "I am in favor of conferring upon the Federal government the power to lay and collect an income tax without apportionment among the States according to the population. I believe that this power should be held by the Federal government so as to properly equip it with the means of meeting national exigencies.

"But the power to tax incomes should not be granted in such terms as to subject to Federal taxation the incomes derived from bonds issued by the State itself or those issued by municipal governments organized under the State's authority.

"To place the borrowing capacity of the State and of its governmental agencies at the mercy of the Federal taxing power would be an impairment of the essential rights of the State which as its officers we are bound to defend.

"You are called upon to deal with a specific proposal to amend the Constitution, and your action must necessarily be determined not by a general consideration of the property of a just Federal income tax, or of giving to the Federal government the power to lay such a tax, but whether or not the particular proposal is of such a character as to warrant your assent.

"This proposal is that the Federal government shall have the power to lay and collect taxes on incomes from whatever source derived. The comprehensive words 'from whatever source derived' if taken in their natural sense, would include not only incomes from ordinary real or personal property but also incomes derived from State and municipal securities.

"In order that a market may be provided for State bonds and for municipal bonds, and that these means may be afforded for State and local administration, such securities from time to time are excepted from taxation. In this way lower rates of interest are paid than otherwise would be possible. To permit such securities to be the subject of Federal taxation is to place "such limitations upon the borrowing power of the State as to make the performance of the functions of local government a matter of Federal grace.

"It is certainly significant that the words from whatever

source derived have been introduced into the proposed amendment as if it were the intention to make it impossible for the claim to be urged that the income from any property, even though it consist of the bonds of the State or of a municipality organized by it will be removed from the reach of the taxing power of the Federal government.

"We cannot suppose that Congress will not seek to tax incomes derived from securities issued by the State and its municipalities. It has repeatedly endeavored to lay such taxes, and its efforts have been defeated only by implied constitutional restriction, which this amendment threatens to destroy. While we may desire that the Federal government may be equipped with all necessary national powers in order that it may perform its national function, we must be equally solicitous to secure the essential bases of State government. I, therefore, deem it my duty, as governor of the State, to recommend that this proposed amendment should not be ratified." [1]

The contrary opinion was expressed by Governor Fort in his message to the New Jersey Legislature on February 7th, 1910:

"As to the claim that the Federal government might injure the States as such by taxing State bonds under an income tax, there are two satisfactory answers.

"*First.* Congress is representative of the States and elected by the citizens and the remedy is in the hands of the people of the States.

"*Second.* No Congress could be elected that would lay any tax with the view of destroying the power or integrity of the States.

"I am not inclined to accept the statement that the Supreme Court of the United States might construe the words 'from whatever source derived' as found in the pending amendment as justifying the taxing of the securities of any other taxing power. There is no express provision in the Federal Constitution prohibiting the Congress from imposing an income tax upon the securities of a State. Yet in the Pollock Case the Court held, speaking through Chief Justice Fuller, as follows: 'As the states cannot tax the powers, the operations or the property of

§ 11. [1] State Papers of Governor Hughes, 1910.

the United States, so it has been held that the United States has no power under the Constitution to tax either the instrumentalities or the property of a State. A municipal corporation is the representative of the State and one of the instrumentalities of the State government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation.' The Supreme Court of the United States has up to this time been the sure reliance not only of the nation, but of the States. The future may be safely rested there. The inability to impose an income tax if the necessities of government require it, would amount to a national calamity." [2]

And by Senator Root in a letter to a member of the Senate: [3]

"My Dear Senator: Since our conversation, last month, I have given much consideration to the scope and effect of the proposed Income Tax amendment to the Constitution of the United States.

Much as I respect the opinion of the governor of the State, I cannot agree with the view expressed in his special message of January 5th, and as I advocated in the Senate the resolution to submit the proposed amendment, it seems appropriate that I should state my view of its effects.

"The proposed amendment is in these words: 'Article 16. The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration.'

"The objection made to the amendment is that this will confer upon the national government the power to tax incomes derived from bonds issued by the States or under the authority of the States, and will place the borrowing capacity of the State and its government agencies at the mercy of the Federal taxing power.

"I do not find in the amendment any such meaning or effect. I do not consider that the amendment in any degree whatever will enlarge the taxing power of the National government or will have any effect except to relieve the exercise of that taxing power from the requirement that the tax shall be apportioned

[2] N. Y. World, February 8th, 1910. [3] N. Y. World, March, 1st, 1910.

among the several States. The effect of the amendment will be, in my view, the same as if it said 'The United States may lay a tax on incomes without apportioning the tax, and this shall be applicable whatever the source of the income subjected to the tax;' leaving the question, What incomes are subject to national taxation? to be determined by the same principles and rules which are now applicable to the determination of that question.

"If we were to construe the proposed amendment only by a critical examination of its words, the view upon which the objection is based would be reached by practically cutting the provision in two and reading it as if it read 'The Congress shall have power to lay and collect taxes on incomes from whatever source derived', without the concluding words. But we are not at liberty to do this. The amendment consists of a single sentence and the whole of it must be read together. It expresses but a single idea, and that is that the tax to which it relates must be laid and collected, 'without apportionment among the several States and without regard to any census or enumeration,' while the words 'from whatever source derived' are obviously introduced to make the exemption from the rule of apportionment comprehensive and applicable to all taxes and incomes.

"We are not left, however, to a mere critical examination of words. This provision as Mr. Justice Bradley said of the Constitution in the legal tender cases, is to be interpreted in the light of history and of the circumstances of the period in which it was framed.

"Justice Story said of another clause of the Constitution in Briscoe v. The Bank of Kentucky, 11 Pet. 332, 9 L. ed. 738, 'and I mean to insist that the history of the Colonies before the Revolution and down to the very time of the adoption of the Constitution, constitutes the highest and most authentic evidence to which we can resort to interpret this clause of the instrument; and to disregard it would be to blind ourselves to the practical mischiefs which it was meant to suppress and to forget all the great purposes to which it was to be applied.'

"This view must necessarily be applied to the proposed amendment if it be adopted. It will be construed in the light of

the judicial and political history which led to the proposal and which appears upon the public records of our government.

"What is that history? The Constitution of 1787 conferred upon the National government the power of taxation without any limit whatever, except that taxes on imports were prohibited.

"The method of exercising the power, however, was subjected to two limitations: One, that imports, duties, and excises should be uniform, and the other, that direct taxes should be apportioned among the States. The apportionment provisions were as follows: 'Article 1. Section 2. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, and' (amended, but not in this respect by the Fourteenth Amendment). 'Article 1. Section 9. No capitation or other direct tax shall be laid unless in proportion to the census of enumeration before directed to be taken.'

"For more than a hundred years after the adoption of the Constitution various tax laws of Congress were from time to time brought before the courts upon objections that they imposed direct taxes in violation of the rule of apportionment. The decisions of the courts uniformly sustained these laws, from the Hylton Case in 1796 which sustained an unapportioned tax on carriages (3 Dallas, 171, 1 L. ed. 556) to the Springer Case, 1880 which sustained an unapportioned tax on incomes (102 U. S. 586, 26 L. ed. 253).

"In the meantime numerous laws were passed and enforced imposing taxes on incomes without apportionment, and a great part of the means for carrying on a civil war was derived from such taxes.

"In the year 1895, however, an income tax law included in the Wilson Tariff Act of 1894, was brought before the Supreme Court in the Case of Pollock v. The Farmers' Loan and Trust Co. and in that case the court decided against the law. The case was heard twice, on the first hearing a majority of the court held that a tax on income derived from real estate must be apportioned as a direct tax, because a tax on real estate itself would be direct, and the judges divided equally as to whether a tax on income derived from personal property must be apportioned (157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673).

"Upon the second hearing of the case the court, by a majority of five to four, held that a tax upon income, derived from personal property, must be considered a direct tax and must be apportioned (158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912), all the judges agreed that taxes on incomes derived from business or occupation need not be apportioned.

"The effect of these decisions was described in one of the minority opinions.

" 'But the serious aspect of the present decision is that by a new interpretation of the Constitution, it so ties the hands of the legislative branch of the government that without an amendment of that instrument, or unless this court, at some future time, should return to the old theory of the Constitution, Congress cannot subject to taxation—however great the needs or pressing the necessities of the government—either the invested personal property of the country, bonds, stocks, and investments of all kinds, or the income arising from the renting of real estate, or from the yield of personal property, except by the grossly unequal and unjust rule of apportionment among the States. Thus, undue and disproportioned burdens are placed upon the many, while the few, safely entrenched behind the rule of apportionment among the States on the basis of numbers, are permitted to evade their share of responsibility for the support of the government ordained for the protection of the rights of all.'

"It was so evidently impossible to collect an income tax by apportionment among the States according to the population, that the general judgment of the country confirmed the opinion that the decision in the Pollock Case had practically taken away from Congress a power of vital importance to the general government—a power, the exercise of which had, at least in one time of peril, proved essential to the Nation's life.

"The attention of the country was sharply called to the need of more government revenue for the first time after the Pollock Case by the decrease of customs and internal revenue receipts and the rapidly mounting deficit which followed the financial panic of 1907, and in the extraordinary session of Congress which began March 15, 1909, when the revised tariff bill came into the Senate, an amendment to the bill was introduced reproducing in substance the old Income Tax provisions of 1894 which the Supreme Court had held to be invalid both as to in-

come derived from real estate and as to income derived from personal property. The avowed and necessary effect of including such provisions in the new tariff law would be to present again to the Supreme Court the same questions which had been decided in the Pollock case and to challenge a reversal of their decision. Thereupon the resolution for the submission of this amendment was introduced in the Senate and was passed by Congress.

"The proposal followed the suggestions of the Supreme Court in the Pollock Case. The evil to be remedied was avowedly and manifestly the incapacity of the National government resulting from the decision that income practically could not be taxed when derived either from real estate or from personal property, although it could be taxed upon when derived from business or occupation.

"The terms of the amendment are apt to cure that evil and to take away from the different classes of income considered by the court a practical immunity from taxation based upon the source from which they are derived.

There was no question in Congress or in the courts or in the county about the taxation of State securities. No one claimed that the inability of the general government to take them was an evil. The inability to tax them did not arise from the terms of the Constitution but from the fact that being the necessary instruments of carrying on other and sovereign governments, they were not the proper subject of national taxation, and that therefore no provisions of the Constitution, however wide the scope of their language, could be held to apply to such securities, or to the income from them.

"Judge Cooley in his work on Constitutional Law says: 'The power to tax, whether by the United States or by the States, is to be construed in the light of and limited by the fact that the States and the Union are inseparable, and that the Constitution contemplates the perpetual maintenance of each with all its constitutional powers unembarrassed and unimpaired by any action of the other. The taxing power of the Federal government does not therefore extend to the means or agencies through or by the employment of which the States perform their essential functions,' etc.

"This rule of construction has been maintained for gener-

ations. It is undisputed it was referred to with the approval of the Justices who wrote and delivered the opinions in the Pollock Case, both for and against the judgment. It has been declared again and again by the Supreme Court to be not open to question. It is a rule of construction just as controlling in defining the scope of the proposed amendment as it is in defining the scope of the existing provisions. Under it, from the earliest times of our government the apparently unlimited taxing power conferred by the terms of the Constitution has been held not to apply to the instrumentalities of the State.

"Under its acts of Congress which, by their expressed terms, appeared to include instrumentalities of State government have uniformly been held not to include them. This uniform, long established, and indisputable rule applied to the construction of our Constitution a rule which has been declared to be essential to a continuance of our dual system of government, that the words of that instrument conferring the power of taxation shall not be deemed to apply to anything but the proper subjects of national taxation. Under it we are forbidden to apply the words 'from whatsoever source derived' in the proposed amendment to any of the instrumentalities of State government.

"This amendment will be no new grant of power. The Congress already has the power to impose taxes on incomes from whatever source derived, subject to the rules of construction which excluded State securities from operations of the power; but the taxes so imposed must be apportioned among the States. Under the proposed amendment there will be the same and no greater power to tax incomes from whatever source derived, subject to the same rule of construction, but relieved from the requirement that the tax shall be apportioned.

"It appears, therefore, that no danger to the powers or instrumentalities of the State is to be apprehended from the adoption of the amendments.

"It would be cause for regret if the amendment were rejected by the Legislature of New York.

"It is said that a very large part of any income tax, under the amendment, would be paid by citizens of New York. That is undoubtedly true, but there is all the more reason why our Legislature should take special care to exclude every narrow and selfish motive from influence upon its action and should

consider the proposal in a spirit of broad National patriotism, and should act upon it for the best interests of the whole country.

"The main reason why the citizens of New York will pay so large a part of the tax is that New York is the chief financial and commercial center of a great country with vast resources and industrial activity. For many years Americans engaged in developing the wealth of all parts of the country have been going to New York to secure capital and market their securities and to buy their supplies. Thousands of men who have amassed fortune, in all sorts of enterprises in other States have gone to New York to live because they like the life of the city or because their distant enterprises require representation at the financial center.

"The incomes of New York are in a great measure derived from the country at large. A continual stream of wealth sets toward the great city from the mines and manufactories and railroads outside of New York. The United States is no longer a mere group of separate communities embraced in a political union: it has become a product of organic growth; a vast industrial organization covering and including the whole country; the relation of New York City to the whole organization of which it is a part is the great source of her wealth and the chief reason why her citizens will pay so great a part of an income tax. We have the wealth because behind the city stands the country. We ought to be willing to share the burdens of a national government in the same proportion in which we share its benefits.

"The circumstances that originally justified the establishment of the rule of apportionment in the Constitution has long since passed away. It is universally conceded that its application to existing conditions would be impossible. The power of taxation which the rule makes it impossible for the Nation to exercise may be again, as it has once been, vital to the preservation of the National existence.

"It would be most unfortunate if the several States of the Union were to insist upon the continuance of this unjust and useless limitation upon the necessary powers originally and wisely granted to a National government."

The Act provides for the exemption of "the compensation of all officers and employees of a State or any political subdivision

thereof."[4] A similar exemption was contained in the Income Tax of 1894.[5]

The former acts contained no such express exemption, but it was held that the Constitution compelled the exemption by implication.

The reasoning upon which this decision was founded is thus stated in the opinion by Mr. Justice NELSON:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the State governments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the Tenth Article of the Amendments, namely: 'The powers not delegated to the United States are reserved to the States respectively, or to the people.' The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

"The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States.

"The relations existing between the two governments are well stated by the present Chief Justice in the case of Lane County v. Oregon, 7 Wall. 76, 19 L. ed. 104. 'Both the States and the United States,' he observed, 'existed before the Constitution. The people, through that instrument, established a more perfect union, by substituting a national government, acting with ample powers directly upon the citizens, instead of the Confederate government, which acted with powers greatly restricted, only upon the States. But in many of the articles of the Con-

[4] Subsection B.

[5] 28 St. at L. 509, chap. 349, § 32.

stitution, the necessary existence of the States, and within their proper spheres, the independent authority of the States, are distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them, and to the people, all powers, not expressly delegated to the national government, are reserved.' Upon looking into the Constitution, it will be found that but a few of the articles in that instrument could be carried into practical effect without the existence of the States.

"Two of the great departments of the government, the executive and legislative, depend upon the exercises of the powers, or upon the people of the States. The Constitution guarantees to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated, by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and unreserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence. A despotic government might. We have said that one of the reserved powers was that to establish a judicial department; it would have been more accurate, and in accordance with the existing state of things, at the time, to have said the power to maintain a judicial department. All of the thirteen States were in the possession of this power, and had exercised it at the adoption of the Constitution; and it is not pretended that any grant of

it to the general government is found in that instrument. It is, therefore, one of the sovereign powers vested in the States, by their constitutions, which remained unaltered and unimpaired, and in respect to which the State is as independent of the general government as that government is independent of the States.

"The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained. The two governments are upon an equality, and the question is whether the power 'to levy and collect taxes' enables the general government to tax the salary of a judicial officer of a State, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the States?

"We do not say the mere circumstance of the establishment of the judicial department, and the appointment of officers to administer the laws, being among the reserved powers of the State, disables the general government from levying the tax, as that depends upon the express power 'to lay and collect taxes,' but it shows that it is an original inherent power never parted with, and in respect to which the supremacy of that government does not exist, and is of no importance in determining the question; and further, that being an original and unreserved power, and the judicial powers appointed under it being a means or instrumentality employed to carry it into effect, the right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general government, stand upon as solid a ground, and are maintained by principles and reasons as cogent, as those which led to the exemption of the Federal officer in Dobbins v. The Commissioners of Erie from taxation by the State; for, in this respect, that is, in respect to the reserved powers, the State is as sovereign and independent as the general government. And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from Federal

taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of the government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?" [6]

The same reasoning compelled even the exemption of income derived from interest on State bonds or municipal bonds issued by the local sub-division of a State from the incidence of the tax.[7] In the decision which set aside the Income Tax of 1894, the Court said: "Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of $60,000, and that the directors of the company intend to return and pay the taxes on the income so derived.

"The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers.

"As the State cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State.

"A municipal corporation is the representative of the State and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. Col-

[6] *The Collector* v. *Day*, 11 Wall. 113, 20 L. ed. 122.

[7] *U. S.* v. *Railroad Co.* 17 Wall. 322, 332, 21 L. ed. 597, 601. See Opinion of Justices, 53 N. H. 635, where the court said that the state could not tax income from U. S. bonds.

lector v. Day, 11 Wall. 113, 124, 20 L. ed. 122, 125; United States v. Railroad Company, 17 Wall. 322, 332, 21 L. ed. 597, 601. In Collector v. Day, it was adjudged that Congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial officers of a State, for reasons similar to those on which it had been held in Dobbins v. Commissioners, 16 Pet. 435, 10 L. ed. 1022, that a State could not tax the salaries of officers of the United States. Mr. Justice Nelson, in delivering judgment, said: 'The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "reserved," are as independent of the general government as that government within its sphere is independent of the States.'

"This is quoted in VanBrocklin v. Tennessee, 117 U. S. 151, 178, 29 L. ed. 845, 854, 6 Sup. Ct. Rep. 670, and the opinion continues: 'Applying the same principles, this court, in United States v. Railroad Company, 17 Wall. 322, 21 Fed. 597, held that a municipal corporation within a State could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the State, created by the State to exercise a limited portion of its powers of government, and therefore its revenues, like those of the State itself, were not taxable by the United States. The revenues thus adjudged to be exempt from Federal taxation were not themselves appropriated to any specific public use, nor derived from property held by the State or by the municipal corporation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income, belonging to it in its municipal character, must be so held. The reasons for exempting all the property and income of a State, or of a municipal corporation, which is a political division of the State, from Federal taxation, equally require the exemption of all the property and income of the national government from State taxation.'

"In Mercantile Bank v. New York, 121 U. S. 138, 162, 30

L. ed. 895, 904, 7 Sup. Ct. Rep. 826, this court said: 'Bonds issued by the State of New York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.'

"The question in Bonaparte v. Tax Court, 104 U. S. 592, 26 L. ed. 845, was whether the registered public debt of one State, exempt from taxation by that State or actually taxed there, was taxable by another State when owned by a citizen of the latter, and it was held that there was no provision of the Constitution of the United States which prohibited such taxation. The States had not convenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each.

"The law under consideration provides 'that nothing herein contained shall apply to States, counties or municipalities.' It is contended that although the property or revenues of the States or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in Weston v. Charleston, 2 Pet. 449, 468, 7 L. ed. 481, 488, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely. . . . The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution.' Applying this language to these municipal se-

curities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution." [8] Bonds issued by municipalities of the territories or the District of Columbia are not, however, exempt from taxation, for this reason, if at all. In the absence of the express exemption of employees of a State or a subdivision thereof, it would be a debatable question whether their compensation was exempt, when they were not technically office-holders. It has been held, in Massachusetts, that a clerk in a post-office is not an officer of the United States and is consequently subject to a State income tax.[9]

Contractors with States, municipalities, or other state subdivisions, may also claim that the same reasoning exempts their profits from Federal taxation. The Supreme Court has intimated its approval of the doctrine that a State has no power to exclude from its territory a corporation engaged there in the performance of a contract with the United States.[10] It might be argued that the same reasoning would conversely prevent the United States from thus impeding the performance of a contract with a State.

The act provides that "the tax shall not be imposed upon any income derived from any public utility or from the exercise of any essential governmental function accruing to any State or any political subdivision thereof." [11] It might be held that the Constitution requires an exemption of these corporations as well.

It has been said that a corporation, such as a telegraph company, which is an agent of the United States, can in all matters affecting its existence as an agent sue in a Federal court, irre-

8 *Pollock* v. *Farmers' Loan & Trust Co.* 157 U. S. 429, 583–586, 39 L. ed. 759, 820, 821, 15 Sup. Ct. Rep. 673.

9 *Melchior* v. *Boston*, 9 Met. 73.

10 *Stockton* v. *Baltimore R. R. Co.* 1 Inters. Com. Rep. 411, 32 Fed. 9, 14; *Pembina Consol. S. M. & M. Co.* v. *Pennsylvania*, 125 U. S. 181, 186, 31 L. ed. 650, 652, 2 Inters. Com. Rep. 24, 8 Sup. Ct. Rep. 737; *Horn Silver Mining Co.* v. *New York State*, 143 U. S. 305, 317, 36 L. ed. 164, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403.

11 Act of October 3, 1913, subsection G, (9).

spective of the amount in controversy.[12] It is well settled that the United States cannot tax the income of a State municipality.[13] In the leading case upon the subject, the Supreme Court said, speaking through Mr. Justice HUNT:

"The power of taxation by the Federal Government upon the subjects and in the manner prescribed by the act we are considering is undoubted. There are, however, certain departments which are excepted from the general power. The right of the States to administer their own affairs through their legislative, executive and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other." [14]

"A municipal corporation, like the city of Baltimore, is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the state in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation." [15]

"We admit the proposition of the counsel, that the revenue must be municipal in its nature to entitle it to the exemption claimed. Thus, if an individual should make the city of Baltimore his agent and trustee to receive funds, and to distribute them in aid of science, literature, or the fine arts, or even for

[12] *Western Union Tel. Co.* v. *City Council*, 56 Fed. 419.

[13] *U. S.* v. *Baltimore & Ohio R. R. Co.* 17 Wall. 322, 21 L. ed. 597.

[14] *U. S.* v. *Baltimore & Ohio R. R. Co.* 17 Wall. 322, 21 L. ed. 597.

[15] *U. S.* v. *Baltimore & Ohio R. R. Co.* 17 Wall. 322, 21 L. ed. 597.

the relief of the destitute and infirm, it is quite possible that such revenues would be subject to taxation. The corporation would therein depart from its municipal character, and assume the position of a private trustee. It would occupy a place which an individual could occupy with equal propriety. It would not in that action be an auxiliary or servant of the State, but of the individual creating the trust. There is nothing of a governmental character in such a position. It is not necessary, however, to speculate upon hypothetical cases. We are clear in the opinion that the present transaction is within the range of the municipal duties of the city, and that the tax cannot be collected." [16]

This case was decided under the old law under which the interest paid by a corporation to its bondholders was taxed, and consequently the tax, although paid by the corporation, was in fact upon the bondholder. Under the present law corporations are, however, taxed upon their profits, and the tax is, in name at least, upon the corporations, not upon the stockholders. It may, however, be claimed that the courts, in view of the constitutional prohibition against the taxation of the property of a State or governmental subdivision thereof, may look through the corporate veil, and in a case where a State or one of its subdivisions owns part of the stock in a private corporation, require that so much of the profits as represents those shares be exempt from the tax.

§ 12. Constitutionality of tax on salaries of President and Federal judges. The statute expressly exempts "the compensation of the present President of the United States during the term for which he has been elected and of the Judges of the Supreme and inferior courts of the United States now in office.[1]

The Constitution provides that, "The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected;" [2] and "The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a

[16] *U. S.* v. *Baltimore & Ohio R. R. Co.* 17 Wall. 322, 21 L. ed. 597.

§ 12. [1] Act of October 3, 1913, subsection B.

[2] Article II. § 1.

compensation, which shall not be diminished during their continuance in office." [3]

Under these sections of the Constitution, the question arises whether Congress can evade the constitutional prohibition by an indirect diminution of the salary of the president and judges through a deduction which is denominated a tax. The question has never been judicially decided, but the better opinion, which is supported by high authority, is that this cannot be done to officers who were appointed or elected before the passage of the statute. Those subsequently elected or appointed may, however, be subject to the tax if that is the intent of the statute. The former income tax acts contained no such express exemption.

At first the amount of the tax was deducted from the salaries of the president, the justices of the Supreme Court and the other Federal judges. Chief Justice TANEY filed the following protest against the deduction:

"WASHINGTON, *February* 16, 1863.

"SIR:—I find that the act of Congress of the last session, imposing a tax of three per cent, on the salaries of all officers in the employment of the United States, has been construed, in your department, to embrace judicial officers, and the amount of the tax has been deducted from the salaries of the judges.

"The first section of the third article of the Constitution provides that 'The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish. The judges of both the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.' The act in question, as you interpret it, diminishes the compensation of every judge three per cent.; and if it can be diminished to that extent by the name of a tax, it may, in the same way, be reduced from time to time at the pleasure of the legislature.

"The Judiciary is one of the three great departments of the Government created and established by the Constitution. Its duties and powers are especially set forth, and are of a character

[3] Article, III, § 1.

that requires it to be perfectly independent of the other departments. And in order to place it beyond the reach, and above even the suspicion, of any such influence, the power to reduce their compensation is expressly withheld from Congress and excepted from their powers of legislation.

"Language could not be more plain than that used in the Constitution. It is, moreover, one of its most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the Government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value without a judiciary to uphold and maintain them which was free from every influence, direct or indirect, that might by possibility, in times of political excitement, warp their judgments.

"Upon these grounds, I regard an act of Congress, retaining in the treasury a portion of the compensation of the judges, as unconstitutional and void; and I should not have troubled you with this letter, if there was any mode by which the question could be decided in a judicial proceeding. But all the judges of the courts of the United States have an interest in the question, and could not therefore with propriety undertake to hear and decide it.

"I am, however, not willing to leave it to be inferred, from my silence, that I admit the right of the legislature to diminish, in this or any other mode, the compensation of the judges when once fixed by law; and my silence would naturally, perhaps necessarily, be looked upon as acquiescence, on my part, in the power claimed and exercised under this act of Congress, and would be regarded as a precedent establishing the principle that the legislature may at its pleasure regulate the salaries of the judges of the courts of the United States, and may reduce their compensation whenever Congress may think proper.

"Having been honored with the highest judicial station under the Constitution, I feel it to be more especially my duty to uphold and maintain the constitutional rights of that department of the Government; and not by any act or word of mine have it to be supposed that I acquiesce in a measure that displaces it from the independent position assigned to it by the statesmen who framed the Constitution. And in order to guard

against any such inference, I present to you this respectful, but firm and decided remonstrance against the authority you have exercised under this act of Congress. And request you to place this protest upon the public files of your office, as the evidence that I have done everything in my power to preserve and maintain the Judicial Department in the position and rank in the Government which the Constitution has assigned to it.

"I am, sir, very respectfully yours,

"R. B. TANEY."

Hon. S. P. CHASE,
Secretary of the Treasury.

The Secretary of the Treasury took no notice of the letter from Chief Justice TANEY. Thereupon the Chief Justice procured the following order to be passed by the Supreme Court of the United States:

Supreme Court of the United States, December Term, 1862. *Order of the Court:* Ordered, upon the request of the Chief Justice, that the following letter from him to the Secretary of the Treasury be entered on the records of the court. 10th March, 1863.[4]

It was deemed unpatriotic by the Federal judges during the war, to resist the collection of this tax, even if it would not have seemed improper for them to raise such a question in time of peace, since it was impossible to obtain its decision by a disinterested tribunal. The tax was collected until 1869, when Attorney-General E. R. Hoar, formerly a justice of the Supreme Court of Massachusetts, rendered an opinion in accordance with that of Chief Justice TANEY.

"ATTORNEY-GENERAL'S OFFICE,
"*October* 23, 1869.

"Your letter of Sept. 30th, 1869, received, asking my opinion upon the question 'whether the law is constitutional which imposes a tax upon the salary of the President of the United States and upon the Judges of the Supreme Court.' I find no law which in express terms imposes a tax upon the salary of

[4] Tyler's Life of Taney, pp. 432–435.

either of these officers. But as several of the statutes which provide for the assessment and collection of internal revenues contain provisions for taxing the salaries of all civil officers of the United States, and thus include in their liberal application the salaries of the President and the Judges of the Supreme Court, the question may perhaps be stated in this form: Are those statutes to be construed as authorizing the imposition of a tax upon the salaries of the officers in question? The first section of the second article of the Constitution of the United State contains this provision: 'The President shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected.' The first section of the third article contains the provision that 'The judges both of the Supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive a compensation which shall not be diminished during their continuance in office.'

"A specific tax by the United States upon the salary of an officer to be deducted from an amount which otherwise would by law be payable as such salary is, in my opinion, a diminution of the salary to be paid to him which in the case of the President and the judges would be prohibited by the Constitution of the United States, if the act of Congress levying the tax were passed during the official term of the President or of the judges respectively concerning whom the question would arise.

"It was held in the case of Dobbins v. The Commissioners of Erie Co. 16 Pet. 435, 10 L. ed. 1022, that the compensation of an officer of the United States was not subject to taxation under State authority, because the effect of such a tax would be to diminish the compensation which the officer was by law entitled to receive. Such a tax was held to interfere with the provision made by the United States for the due execution of the powers and functions of the National Government by means of officers which it appointed and paid. In the case of the Pacific Ins. Co. v. Soule, 7 Wall. 434, 19 L. ed. 95, it was decided that an income tax was an excise or duty imposed by a statute of the United States relating to internal revenue. Congress being prohibited by the Constitution from diminishing the salaries to be paid to the judges of the Supreme Court and the President during their respective terms of office, can no more do it by levying an ex-

cise or duty upon these salaries and deducting the amount thereof from them than could a state from that of an officer of the United States under the doctrine of the case in 16 Peters Reports. The tax operates directly as a diminution of the compensation of the officer.

"I am therefore of the opinion that no income tax could be lawfully assessed and collected upon the salaries of the President or any of the judges who were in office at the time the statute imposing the tax was passed. In regard to the salary of a subsequent President or judges subsequently appointed, the constitutional objection would not arise if it were clearly the intention of the legislature that the tax should be imposed upon the officers whenever by new appointments or a new election there would be no constitutional difficulty in the application of a previously existing law. But I am of the opinion that this would not be a safe and just rule of construction. Statutes imposing taxes are in their nature temporary and subject to frequent modification and repeal. When Congress imposes a tax upon the salaries of all civil officers, this language, although general, must necessarily be construed to mean all civil officers except those whom Congress has not the constitutional power to subject to such a tax.

"As the language of the statute could have no application to the President and judges holding their offices at the time it was passed, there would seem to be sufficient reason for holding that there was no intention that it should apply to those offices.

"If it were supposed applicable to the salary of the President, the singular result would follow in this case that as the Constitution prohibits the increase as well as the diminution of his salary during his term of office, if at the time when his official term commenced his salary was subject to a deduction in the nature of a tax, it would not be competent for Congress during his term of office by a repeal or diminution of the tax to increase the amount paid to him. So that if the law imposing an income tax were repealed, the President alone of all the citizens of this country would continue liable for its payment during the term for which it had been originally imposed, if his official term so long continued. And in the case of the judges, as the amount of income tax laid upon salary should be varied from time to time, one judge might be liable only to the

amount of part of the income tax which the law imposed on salaries generally, and different members of the same court would be receiving different compensations.

"I think it the more reasonable view that the class of officers over which Congress has not the taxing power by the Constitution, should not be held to be embraced within the general phrase 'all salaries of civil officers' and have therefore come to the conclusion that the just construction of the law does not require or permit any deduction of an income tax from the salaries of the President or the justices of the Supreme Court.

"Very respectfully,

"Your obedient servant,

"E. R. HOAR."

Hon. GEO. O. BOUTWELL,
Secretary of the Treasury.[5]

Subsequently the exemptions were allowed in accordance with this opinion.

§ 13. Constitutionality of taxation of income previously collected. It seems to be the opinion of Senator Root that so much of the tax as affects income previously received is invalid.

His argument upon the subject is as follows: "I have introduced a brief amendment to the tariff bill, which I shall ask to have referred to the Committee on Finance; but I wanted to call the Senators' attenton to the precise point of the amendment. It is an amendment to the provision that the income tax shall be computed on incomes accruing from March 1 to December 31, 1913.

"I think the provision will encounter very serious question. The change I propose is to have the income for the first year computed from the passage of the act, rather than from a fixed date—March 1, 1913. "The reason why I think it would be wise to make the change is that all direct taxes must be apportioned unless they come within the amendment relating to the income tax. We can impose a tax upon incomes without appor-

[5] 13 Opinions of Attorney-generals, 161. *Contra*, the Supreme Court of Pennsylvania has held that a tax upon a judge's salary, imposed subsequent to his appointment, is not a violation of a constitutional prohibition against the diminution of his salary during his official term. *Commissioners of Northumberland County* v. *Chapman*, 2 Rawle, 73, A. D. 1829, Gibson, J.

tioning it because of the amendment, but we can not impose any other direct tax without apportionment. When income is received it immediately becomes principal. The income that was received the 1st day of July of the present year, having been received, became principal, and no law hereafter can tax it without apportionment, any more than we can fix now the income that was received 10 years ago without apportionment. "So if the bill becomes a law with the provision in it that has been reported from the committee you will find yourselves endeavoring in one sentence to tax income that comes under the amendment, and to tax past income, income received, reduced to possession, and turned into principal before the passage of the act, and that you can not do without apportionment.

"It is to avoid that difficulty, which I am sure is very serious, that I propose the amendment which I now ask 'to have referred to the Committee on Finance.' " [1]

The following opinions to the contrary were presented to the Senate of the United States:

THE INCOME TAX.

"Memorandum prepared by Representative Hull, of Tennessee, August 5, 1913.

"The amendment proposed by Senator Root on July 18, 1913, is based upon the theory that the proposed income-tax law can not reach for taxation any income accruing prior to the date of its taking effect, which was required to be taxed under the rule of apportionment under the decision in the Pollock case, even though such income accrued subsequent to the ratification and promulgation of the income-tax amendment to the Constitution. The essence of this contention is that within the meaning of the proposed tax law the tax is limited to the particular income as a specific fund out of which the tax is to be taken, and also that such income becomes principal whenever received, and that principal, therefore, can only be reached for taxation by apportionment, notwithstanding the effect of the recent amendment and the usual method of levying and measuring income taxes by

§ 13. [1] Cong. Record, p. 2788, A. D. 1913.

the rule of uniformity as embraced in the proposed law and in former laws and practices of the United States Government.

Prior to the Pollock decision Congress had exercised the broadest power to impose the tax on incomes by the rule of uniformity, from whatsoever source derived. The great question raised in the Pollock case did not go to the power of Congress to impose the tax, but to the question of whether the power had been exercised according to the method prescribed by the Constitution—that is to say, whether a power to tax, limited only by one exception and two qualifications, was being used according to the restrictions as to the method prescribed for its exercise. The Pollock decision held that only certain classes of incomes were excise taxes and as such leviable by the rule of uniformity, while certain other classes, viz., rent of real estate, and incomes derived from invested personalty, were of such a nature that a tax laid upon the same constituted a direct tax, and which must fall under the rule of apportionment. Prior to this decision the policy of the Government and the decisions of the courts were to the effect that all taxes upon incomes being considered excise taxes might be levied under the rule of uniformity and might be measured by the income accruing during the preceding year or preceding years.

"The income-tax act of August 5, 1861, provided that the tax should be assessed 'upon the annual income for the year preceding the 1st of January, 1862,' thus including the income that had accrued during the seven months next preceding the passage of the law. The act of July 14, 1862, required the tax to be imposed upon the income that had accrued during the previous six and one-half months of that year prior to the date of the passage of the act.

"The English act of June 28, 1853, likewise applied to all income accruing from the 5th day of the preceding April.

"In the case of Stockdale v. Insurance Co. (20 Wall., 331, 22 L. ed. 348) the Supreme Court said:

" 'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past years, can not be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a

tax of 5 per cent. on all income of the preceding year, although one tax on it had already been paid; and no one doubted the validity of the act or attempted to resist it.'

"The soundness of this language was later sustained in the case of Patton v. Brady (184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493).

"In the case of Maine v. Grand Trunk R. (142 U. S. 217–229, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 1 Sup. Ct. Rep. 121, 163) the Supreme Court suggested that income for one year might properly be taken for the measure of all future years.

"Again—

'unless the Constitution prohibits restrospective legislation, the basis of the assessment of taxes may as lawfully be retrospective as the reverse; that is to say, it may as well have regard to benefits theretofore received as to those that may be assessed thereafter.' (Cooley on Taxation, 3d ed. 492).

"Retrospective legislation is not prohibited.

In Drexel & Co. v. Commonwealth (46 Pa. 31, at p. 40) the Supreme Court said:

" 'It is clearly constitutional as well as expedient in levying a tax upon profits or income to take as a measure of taxation the profits or income of the preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable.'

"Additional authorities might be cited to the same effect. As stated, these authorities only had in mind the imposition of an income tax as an excise or indirect tax by the rule of uniformity, whereas it should be borne in mind that under the Pollock decision incomes from rent of real estate and invested personalty are direct taxes, and until the ratification of the recent amendment could only be levied by apportionment. The recent amendment, however, provided that Congress might impose a tax on incomes without apportionment, whether considered as direct or indirect taxes. It is evident, therefore, that in so doing the rule of uniformity must govern. The question then arises as to whether Congress may thus impose a tax upon all incomes from whatever source derived, whether considered direct or indirect taxes, in the same manner in all essential respects that it had, previous to the Pollock decision, imposed

the tax upon incomes as an excise and under the rule of uniformity. If so, it necessarily follows that the tax may be measured by all income accruing from and after the ratification of the constitutional amendment.

"Does not the very nature and purpose of a tax on incomes accord with the foregoing view? In the broad and usual sense of tax laws the Government, for example, might impose a tax upon property according to its value by a direct and specific levy upon the property itself, and in concrete form, either real or personal; this would be done by apportionment; or if it was sought to impose a capitation tax, which is one upon the person solely, without any reference to his property, real or personal, this would be effected by apportionment, while, upon the other hand, a tax laid upon any business, or franchise, or employment, or income would fall under the rule of uniformity.

"The Pollock decision held the income tax invalid not on the ground that income could become capital and escape the tax, but on account of its origin; that it was, in effect, a tax on realty and personalty. The only proper inquiry in the light of the recent amendment, therefore, is not as to the *origin* or *disposition* of the income in question, but what amount of income accrued to a taxable individual during a given period. It must follow that the account of annual income required of a citizen is for the purpose solely of ascertaining what amount of tax ought to be imposed upon him in consequence of his having made profits and collected by the Government not necessarily out of the specific income in question, but from the general property of the taxpayer as well. State v. Bell, 61 N. C. 87.

"This view refutes the theory both that income may become principal, and thereby escape taxation, and also the *objection as to retrospective legislation.*

"In the language of the Supreme Court Morey v. Lockwood, 8 Wall. 234, 19 L. ed. 339:

"(The tax is payable by the person because of his income, according to its amount and without reference to the way in which it was obtained).

"The proposed measure would require no act of the citizen until the 1st of January next. It would assess and collect a tax off the individual during next year. Until the 1st day of January the citizen could not balance off against his gross profits

his losses, expenses, etc., and ascertain his net income for the preceding year. Until the close of the year the citizen could not know whether his income would be absorbed by losses, expenses, etc., or otherwise disposed of without even being received, nor in fact could he know whether he would have *any net income* until he had balanced his receipts and expenditures *after* the end of the year. Within the meaning of the proposed tax the cumulating items of profit must necessarily *remain in abeyance* until the expenditures for the year are deducted therefrom at the end of the year before it could be known whether there was any sum remaining that would or *could become capital.*

"The framers of the Constitution prescribed two great classes of taxes. The sole practical basis for this division related to the method of their imposition, viz., those that were to be apportioned, were called direct taxes, while those to be levied by the rule of uniformity were called indirect taxes. No court has ever inquired whether a tax is direct or indirect except for the purpose of determining whether it shall be levied under the one or the other rule just stated. *Income* from real estate and invested personalty is now as fully exposed to the taxing power of the Government under the rule of uniformity as is *income* from trades, professions, etc. The inquiry is not whether profits from any source are *property,* but are they *income.* If so, they are taxable.

"The Pollock decision held that as to certain classes such profits were property and not income; but the recent amendment, in its necessary effect, revoked this doctrine and said they shall be treated as any other kind of income for the purpose of an income tax.

"Under the proposed measure income is both the subject and the measurement of the tax. The recent amendment gives Congress the power to tax all classes of income without apportionment. Certainly, then, Congress may measure the tax by the same income. The Supreme Court has held that where the power to lay a tax exists it may be measured by the income from property *not in itself taxable.* Flint v. Stone Tracy Co. 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312; U. S. Express Co. v. Minn. 223 U. S. 335, 56 L. ed. 459, 32 Sup. Ct. Rep. 211.

"The constitutional amendment simply exempts the entire tax

to which it relates from the rule of apportionment. It then becomes utterly immaterial to inquire whether the tax is direct or indirect or as to the origin or source of the income or its disposition—the only inquiry pertinent and necessary is, What amount of net income accrued to an individual during a given taxing period? The tax is thereupon measured by the same and collected out of *his general property.*

"From any viewpoint it must be agreed that Congress would impose a tax with respect to the annual net income of the citizen, and the tax to be measured by such income, whether the same or parts thereof be considered *property* or *otherwise.* Had the recent amendment been a part of the Constitution when the Pollock Case was decided there is no reason to suppose that even for the purpose of income taxation any class of income would have been held to be *property* in the *taxing* sense whatever its character or nature may have been considered in *other senses.* Before the recent amendment the direct tax was considered a tax in terms on property, real or personal, whereas all other taxes related to business, privileges, franchises, etc., though measured by different methods.

"These latter taxes are taken from the general property of the citizen, just as the former, though not imposed in terms thereon. The recent amendment simply transferred certain categories of income from one of the great classes of taxes to the other, to all intents and purposes if not in name. This transfer makes all incomes conform to the tax-meaning definition of the same as prescribed by all the courts, text writers, commentators on the Constitution, and acts of Congress prior to the Pollock decision.

"Income has been defined as 'the gain which proceeds from labor, business, *or property* of any kind; the profits of commerce or business.' Sims's Appeal, 44 Pa. 347; Parker v. North British & M. Ins. Co. 42 La. Ann. 428, 7 So. 599; Heyward v. Farmers' Min. Co. 42 S. C. 138, 46 Am. St. Rep. 702, 28 L.R.A. 48, 19 S. E. 963, 20 S. E. 64.

"Also, an income tax is defined as 'a tax which relates to the product or income from property or from business pursuits.' Waring v. Savannah, 60 Ga. 93; Reed v. Louisville, 97 Ky. 394, 28 L.R.A. 480, 30 S. W. 973.

"It is a tax upon a person in respect of his income imposed in consideration of the amount of his net profits.

" 'A tax on the yearly profits arising from *property,* professions, trades, and offices.' (Black's Law Dictionary.)

" 'One which relates to the product or income from property or business pursuits.' Reed v. Louisville, 97 Ky. 394, 28 L.R.A. 480, 30 S. W. 973.

"Under the general property laws of the States the taxable status of property, real and personal, relates to the date fixed by law for its assessment. The assessment, when later made, must fix its value as of this date. This may be any day during a taxable year. Eaton v. Union County Nat. Bank, 141 Ind. 159, 40 N. E. 693; Dodge v. Nevada Nat. Bank, 48 C. C. A. 626, 109 Fed. 726.

"An income tax is assessed and collected during the year subsequent to the accrual of the income returned and by which the tax is measured. Under a tax imposed with respect to net incomes the citizen may be required to return for the purpose of the measurement of the tax either his income for the preceding year, or his average income for a designated number of preceding years, or his estimated income for the current year. That view is sustained by previous citations herein.

"It therefore follows that Congress at least during any period of the present year may impose and collect a tax on all incomes accruing subsequent to the promulgation of the recent constitutional amendment, and it is strongly probable that the constitutional amendment had the effect to empower Congress to measure the tax by all income accruing from the 1st day of January last. The power to impose the tax has existed during the entire year, and there has been no impediment to its imposition under the rule of uniformity during most of the year, and under the weight of authority in the States, together with the construction placed upon the National Constitution by the Supreme Court in the Legal Tender, and other cases, no reason appears why the tax now proposed could and should not be measured by the income accruing from the first of the year.

"Such latter provision would provide for the doing of no act prior to December 31 next which would otherwise have been done by the citizen. It would undo nothing; it would neither

take away nor *impair* any vested right. State ex rel. Greenbaum v. Rhoades, 4 Nev. 313.

" 'The language of a constitutional amendment should be read in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then construed if there be therein any doubtful expressions, in a way, so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted.' Maxwell v. Dow, 176 U. S. 581, 44 L. ed. 597, 20 Sup. Ct. Rep. 448, 494."

"DEPARTMENT OF JUSTICE,
"OFFICE OF THE ATTORNEY GENERAL,
"*Washington, D. C., August 6, 1913.*

"Hon. F. M. SIMMONS,
"*United States Senate.*

"MY DEAR SENATOR: Replying to your letter of July 30, in which you inclose an amendment offered by Senator ROOT to the income section of House bill 3321, together with his remarks at the time of its introduction, and asking for my views with reference to the Senator's contention, permit me to say:

"I am sending you two separate memorandums, one which Congressman HULL very kindly prepared upon my request, and the other prepared by one of the assistants in the department. I hope they will answer your demands.

"It seems to me that the Senator's proposition is not well founded. The practice in the past, the necessity for moving along practical lines with respect to tax matters, together with the other suggestions contained in the inclosed memorandums, are adequate to overthrow his contention.

"With best wishes, faithfully, yours,
"J. C. MCREYNOLDS,
"*Attorney General.*

"RE MR. ROOT'S PROPOSAL TO AMEND INCOME-TAX LAW.

[Memorandum for the Attorney General by T. M. Gordon, July 31, 1913.]

"Mr. ROOT suggests that the income-tax law must be amended to operate only from the date of passage. His theory is that income, once accrued, becomes principal. Hence there can be no such thing as an 'income tax' on past income. Such a tax is a

tax on principal, a direct tax, still requiring apportionment, despite the fifteenth amendment. I do not agree with Mr. ROOT.

"The whole question turns upon what the words 'taxes upon incomes from whatever source derived' mean as used in the sixteenth amendment.

"An income tax is *sui generis*. It is a legal fiction, a purely metaphysical conception, very difficult to define or classify. It seems to me, however, that it must be treated in a practical sort of way, and that the definition which Mr. ROOT's argument assumes builds up an unduly elaborate legal fiction, unwarranted by authority and very unfortunate in its results.

"Of course Mr. ROOT can not have in mind that a tax to be an *income* tax must actually be collected, or even assessed, before income ceases to be income. Such a requirement would be wholly impossible to comply with. For example, such a requirement would render it improper to assess the tax upon income for the preceding year, as is done by this law, and as is the universal custom of income-tax laws both in this country and in England.

"Apparently Mr. ROOT does assume, however, that a tax can not be a *'tax upon income'* unless the law levying the tax is in active operation at the precise instant that the income accrues, so that it may then seize upon the income *constructively;* i. e., in legal fiction. The law is conceived as a sort of invisible net interposed between the individual and his source of income. The Federal 1 per cent. is caught, branded, and turned loose again, as it were, to be counted and collected at a later day by the assessor. Of course physical analogies can not express precisely how the legal fiction solves such difficulties as the fact that any individual's yearly income can not be known till the end of the year, or the situation of the merchant who may gain in one transaction and lose in the next; nevertheless it must be admitted that such a conception of a tax on income, though very refined and metaphysical, is intellectually possible.

"I do not think, however, that usage, as evidenced by prior laws upon the subject and by judicial decisions, has ever restricted the meaning of the words to tax laws which might be conceived to operate in such a fashion.

"I. *First, as to the word 'income,'* I do not think that word

necessarily implies a *specific fund* from which the tax must be taken. A man who possessed no vested right to anything might properly say, 'My present income is $5,000 a year.' If that *is* his *'present income,'* why may he not be taxed upon it?

"II. *That leads to the significance of the word 'upon.'* This word is used in such a wide variety of ways that it is very difficult to define exactly what we do mean when we say a tax *'upon'* anything. Taxes, generally speaking, are really contributions from *persons,* who are classified for tax purposes with reference to various characteristics, as ownership of land, carrying on a certain kind of business, etc. The factor or factors with reference to which individuals are classified is usually said to be the thing *'upon'* which the tax is levied. (24 Harvard Law Review, pp. 41–42). Thus Mr. Kennan, in his recent book on *Income Taxation,* defines an income tax as *'a tax the amount of which is determined with reference to the income of the taxpayer'* (p. 9). In other words, 'upon' usually means *'with reference to,'* or *'based upon,'* or *'measured by.'* And an income tax is a tax based upon income or measured by income, not carved out of a specific fund of income.

"In this sense a tax can be 'upon' a thing which a person no longer owns or a state of things which has now ceased to exist. As Mr. Cooley says (Cooley, Taxation 3d ed. pp. 492, 493, 494):

" 'Unless the Constitution prohibits retrospective legislation the basis of an assessment of taxes may as lawfully be retrospective as the reverse; that is to say, it may as well have regard to benefits theretofore received as to those which may be assessed thereafter. Locke v. New Orleans, 4 Wall. 172, p. 492, 18 L. ed. 334.

" '* * * Nor in apportioning the tax between individuals is there any valid objection to making it on consideration of a state of things that may now have come to an end; *as where a tax is imposed on the extent of one's business for the preceding year instead of upon an estimate of the business for the year to come.* Drexel v. Commonwealth, 46 Pa. 31; People v. Gold Co. 92 N. Y. 383. * * * One may be taxed upon property which he has long ceased to own when the tax is levied' (pp. 493–494).

"Locke v. New Orleans, 4 Wall. 172, 18 L. ed. 334, cited

supra, held a State statute imposing an additional tax on property according to the assessment for the previous year, and also according to the assessment for the year before that, but not exceeding the tax already imposed according to those assessments, was constitutional.

"Drexel v. Commonwealth, 46 Pa. 31, also relied on by Mr. Cooley, related to an income tax. The court said (p. 40):

" 'This act clearly intended to levy a tax of 3 per cent. on the profits or income of the business and was not meant to tax capital. Profits must necessarily be the net profits of the business, and the Commonwealth was to receive of them 3 per cent. It was in fact a tax upon the income of the business in which the defendants were engaged. The English income tax and the United States income tax are based upon the incomes received in preceding years. The present United States income tax is laid upon the income of 1862, and the act of Congress of the 5th of August, 1861 (12 Stat. at L. 309, chap. 45), expressly declares that 'the tax herein provided shall be assessed upon the annual income of the persons hereinafter named, for the year next preceding the 1st of January, 1862, and the said taxes, when so assessed and made public, shall become a lien upon the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid.'

" 'It is clearly therefore perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable, particularly when we find it always adopted in exactly similar cases. The tax is graduated upon each individual upon his individual receipts.'

"In People v. Gold Co. 92 N. Y. 383, a tax upon the franchises of corporations, based upon dividends for the year preceding the passage of the law, was upheld.

" 'The fact that the amount of the tax may in some cases be fixed by reference to the business of the company during the year does not make the act retrospective. The burden it imposes is future and for future expenditures. It is competent for the legislature to adopt such method of valuing the franchises or

property of corporations for the purpose of taxation as it deems proper' (pp. 390–391).

"In Glasgow v. Rowse, 43 Mo. 479, an additional tax on incomes, levied according to the assessment of the preceding year, was upheld. The court declared this to be 'in entire harmony with the then existing revenue law, which provided that the taxes collected for any year should be based on an assessment made for the previous year' (p. 488).

"III. As appears from the cases supra, the courts do not go through an elaborate fiction to prove that the income is still income at the time the tax attaches. An income tax is still an income tax whether it is levied on this year's income or last year's income or (as has actually been done in the case of professional incomes by the English income-tax statutes since earliest times) on the *average* income for a period of years.

"Furthermore, *every one* of the earlier Federal income-tax statutes and every one of the English statutes that I have examined not only based each year's tax upon the income for the preceding year, but also based the tax for the first year upon income *which had already accrued before the passage of the act.* It is only fair to assume that the kind of income tax to which the sixteenth amendment refers is the kind of income tax which had been called an income tax in Federal statutes and levied and collected many times theretofore.

"The Federal income-tax laws are as follows:

Act of August 5, 1861 (12 Stat. at L. 292, chap. 45):

'The tax herein provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said tax, to wit, *the year next preceding the 1st of January, 1862.*' (12 Stat. at L. 309, sec. 49, chap. 45).

Act of July 1, 1862 (12 Stat. at L. 473, 474, chap. 119):

* * * 'The duty herein provided for shall be assessed and collected upon the *income for the year ending the 31st day of December next preceding the time for* levying and collecting such duty; that is to say, on *the 1st day of May, 1863*, and in each year thereafter.'

Act of June 30, 1864 (13 Stat. at L. 223, 281, 283, chap. 173):

'And the duty herein provided for shall be assessed, col-

lected, and paid upon the gains, profits, or income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying such duty (p. 281, sec. 116). * * * Shall be levied on the 1st day of May' (p. 283, sec. 116).

Resolution of July 4, 1964 (13 Stat. at L. 417):

* * * 'There shall be levied, assessed, and collected, on the *1st day of October, 1864,* a special income duty upon the gains, profits, or income *for the year ending the 31st day of December next preceding* the time herein named.'

"Act of March 2, 1867 (14 Stat. at L. 471, 478, 480, chap. 169):

'And the tax herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying the tax [1] (p. 478).

"*Provided,* That the tax on *incomes for the year 1866 shall be levied on the day this takes effect'* (p. 480).

Act of July 14, 1870 (16 Stat. at L. 256, chap. 225):

* * * 'the tax hereinbefore provided shall be assessed upon the gains, profits, and income for the *year* ending on the 31st day of December next *preceding the time for levying* and collecting said tax, *and shall be levied on the 1st day of March, 1871.'*

"Act of August 27, 1894 (128 Stat. at L. 553, § 27, chap. 349, U. S. Comp. Stat. 1901, p. 2260):

'Tax to be levied January 1, 1895, on income for the year ending December 31 next preceding time of levy' (§ 1 and § 30).

"English income-tax laws are as follows:

Act June 22, 1842 (5 and 6 Vict. c. 35): Taxed income from April 5, 1842.

Act June 28, 1853 (16 and 17 Vict. c. 34): Taxed income from April 5, 1853.

Since 1860 the English tax has been re-enacted annually (16 Halsbury's Laws of England, 609). The act of April 29, 1910 (10 Edward VII and 1 Geo. V, c. 8, § 65), is an example, which provides

'(1) Income tax for the year beginning on the *6th day of April, 1909,* shall be charged at the rate of 1s. 2d.

'(2) All such enactments as were in force on the 5th day of April, 1909, shall, subject to the provisions of this act, have full force and effect with respect to any duties of income tax hereby granted."

"IV. *The economic conception of an income tax is against Mr. Root's interpretation.*

From the economist's point of view the income tax is a contribution by each individual, *based upon his ability to pay, measured by his income.* A man's income for the preceding year is the most natural measure of his ability. And, as we have seen above, all previous income-tax measures have been levied on that basis.

Nor would it make the tax a 'capitation' tax to consider it in this way. 'Capitation' taxes, in the constitutional sense, are *poll* taxes, levied upon all men *equally,* without regard to wealth or extrinsic circumstances. (Cooley, Taxation 3d ed. p. 28; Hylton v. U. S. 3 Dall. 171; Springer v. U. S. 102 U. S. 586, 26 L. ed. 253; Head Money Cases, 18 Fed. 135, 139; Glasgow v. Rowse, 43 Mo. 480).

It is true that in Pollock v. Farmers' Loan & Trust Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, the court stated the economic theory and expressly refused to follow it to its logical conclusion in the case of income from *property,* insisting upon the necessity of considering also the *source* whence the income was derived. (See p. 629.) But that holding does not help Mr. Root's contention. The holding was that a tax upon the income of property is a tax upon the property itself, not because the *income* is property, but because the tax reaches back *through* the income to the source from which it springs. Knowlton v. Moore, 178 U. S. 41, 82, 44 L. ed. 969, 986, 20 Sup. Ct. Rep. 749. Therefore the sixteenth amendment, which was passed with the express purpose of escaping that decision, must be held to give power to levy a direct tax on a property, at least *that kind* of a direct tax on property which is measured by its income. As was suggested above, if the sixteenth amendment is really designed to permit a tax on *property measured by income,* there is no reason why income already accrued may not be taken as the standard.

V. *The usefulness of the tax as a war measure.*

"This was one of the reasons most persistently urged for the

adoption of the sixteenth amendment. Mr. Root's interpretation would seriously impair its effectiveness, however. How could large amounts of money be raised with any degree of quickness if Congress must wait a year for income to accrue? And of course Mr. Root's objection would apply to an increase in the *rate* of taxation as well as to the original imposition of a tax. That this is a consideration of real substance is shown by the fact that the income tax of 1861, for instance, was aimed at income for the entire year of 1861, though passed on August 5 of that year. (12 Stat. at L. 292, chap. 45. And as the war proceeded it was found necessary to levy (Resolution July 4, 1864) a special income tax on income for the whole year *1863*. (13 Stat. at L. 417). It would be very unfortunate if the sixteenth amendment would not permit such a war measure, and for Congress to assent to such a construction by amending the law at this time would be a contemporaneous legislative interpretation of some weight if the question ever arose hereafter.

Faithfully, THURLOW M. GORDON,
Special Assistant to the Attorney-General.

Opinion of Senator JOHN K. SHIELDS.

"The argument, advanced to support the contention of the Senator is predicated solely upon the assumption that profits, dividends, and other moneys, constituting an income, when received, immediately become 'principal,' or, in other words, is incorporated into the corpus of the estate of the taxpayer, and therefore not subject to direct taxation without apportionment. This involves the further assumption that the tax imposed can only be collected out of the income of the taxpayers, or, in other words, that his general estate can not be subjected to its payment.

'The question whether or not an income accrued immediately and automatically becomes principal or a part of the general estate of the owner, whether sound or unsound in economics or financial evolution, is not in my opinion material to the question involved.

But it is unsound. An income is defined to be:

'That gain which proceeds from labor, business, property, or capital of any kind, as the produce of a farm, the rent of houses, the proceeds of professional business, or money or stock funds,

etc.; salary, especially the receipts of a private person or a corporation from property.'

This is the natural and obvious sense of the term, and it is so used in the constitutional amendment and in this bill. The gain, profit, or acquisition constituting the income when it accrues and is ascertained becomes an entity and property as much as a farm, bonds, corporate stocks, or other property from which it may have had its source. That it may automatically immediately become incorporated into the estate of the owner or invested thereafter to yield an income, or is spent, given away, or consumed, does not destroy the property entity of the value it had when it accrued. The fact that the property existed and was owned by the taxpayer at one time is indestructible.

I suppose the objection of the Senator goes only to computations on incomes arising from property, real and personal, and not to those on incomes from business.

The question really presented for consideration is whether the provision of the bill for the tax for the current year is retroactive in its operation and imposes a liability for taxes before the enactment of the law, and is for this reason unconstitutional.

The constitutional amendment under which this tax in part is imposed without apportionment ordains:

'The Congress shall have power to lay and collect taxes *on incomes* from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.'

It is well settled that—

'The language of a constitutional amendment should be read in connection with the known condition of affairs out of which the occasion of its adoption may have arisen, and then construed, if there be therein any doubtful expressions, in a way, so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted.' Maxwell v. Dow, 176 U. S. 597, 44 L. ed. 603.

It is a part of the history of this country that much of the personal property owned by everyone, and the great accumulations of wealth in the hands of the few, had for years escaped taxation. They could not be taxed direct without apportion-

ment, which was not deemed advisable. The income-tax law of 1894 was enacted to remedy this injustice and to make this property bear its just proportion of the expenses of the Government.

The Supreme Court of the United States held that tax, in so far as it was imposed upon incomes received from real estate and personal property, to be a direct property tax and, being levied without apportionment, unconstitutional. The tax upon incomes which arose from other sources, and upon which an excise tax could be imposed, was not held void for that reason, but the contrary conceded. Pollock v. Farmers' Loan & Trust Co. 158 U. S. 618, 630, 39 L. ed. 1119, 1123, 15 Sup. Ct. Rep. 912.

The sixteenth amendment to the Constitution was proposed and adopted to authorize Congress to impose a tax like that of 1894, after which this is modeled, and which is proposed to be enacted under that power, in so far as it taxes incomes arising from real and personal property. Congress already had the power to impose a tax without apportionment on incomes arising from gains, profits, or other acquisitions in a business ordinarily called an excise tax. Flint v. Stone Tracy Co. 220 U. S. 107, 55 L. ed. 398, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

There are two grounds upon which, in my opinion, the tax for the current year can be sustained.

First. The Congress has general power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, unlimited save that duties, imposts, and excises shall be uniform throughout the United States, and no capitation or other direct tax shall be laid unless in proportion to the census or enumeration, directed to be taken decennially, nor on articles exported from other States. (Constitution, Art. I, secs. 8 and 9).

The Constitution contains no provision prohibiting the Congress from imposing a tax upon property owned or business done by the taxpayer previously to the enactment of the law levying the tax. The general rule is that the Congress, within constitutional limitations, has absolute power to determine the objects of taxation and the method of the assessment of the tax.

Cooley's Con. Lim. 737; Flint v. Stone Tracy Co. 220 U. S. 167, 55 L. ed. 420, 31 Sup. Ct. Rep. 342; Weston v. City of Charleston, 2 Pet. 466, 7 L. ed. 487.

Therefore if the bill be construed to impose the tax for current year on account of the ownership of incomes received—property owned and business done previous to the enactment of the law—it is within the power of Congress, without constitutional objection, and valid.

There is no constitutional prohibition of retroactive legislation which will affect this tax. Black's Con. Law 753; Cooley's Con. Lim. 529; Satterlee v. Matthewson, 2 Pet. 380, 7 L. ed. 458; Drehman v. Stifle, 8 Wall. 595, 19 L. ed. 508.

If the constitutional amendment changes or authorizes Congress to change the classification of a tax on incomes derived from property from that of a direct tax to that of an excise tax, and the tax here imposed is one of the latter class, then the provision for computing incomes before the enactment of the bill is clearly a mere method of assessment and not only allowable, but usually done in assessing excise taxes. The authorities authorizing this manner of assessment of excise taxes will be hereafter stated.

Second. The provision of the bill requiring incomes received by the taxpayer from all sources, from March 1, 1913, to be computed in ascertaining the tax to be paid for the current year is not the imposition of a retroactive tax, but the method of assessment of the tax imposed for that part of the current year after the enactment of the law, consisting in part of a property tax and in part of an excise tax, and is valid and constitutional.

It is immaterial what the tax is called. The courts will treat it according to its correct classification as ascertained by the legislative intent disclosed in the bill when construed in the light of its legislative and judicial history. I am inclined to think the tax imposed is a property tax in part and excise tax in part. It is a property tax so far as imposed upon incomes accruing to the taxpayers from real and personal property, and an excise tax so far as laid upon incomes arising from all other sources. I do not think the constitutional amendment was intended to change the classification of the tax, but merely to allow it to be imposed without apportionment.

In so far as it is a property tax, it is imposed upon the tax-

payer as the owner of so much property—that certain portion in value of his property which he acquired as an income from real and personal property—during certain periods for the current year, from March 1 to December 31, and thereafter annually. The extent of the property—the portion of the estate of the taxpayer upon which he is taxed—is thus measured by the income received during said periods, to be ascertained and fixed as in the bill prescribed. This, under the Pollock cases, is a direct tax, but it is now authorized, without apportionment, by the constitutional amendment under which it is proposed to be enacted.

It is an excise tax so far as it is imposed on incomes from all other sources, as has been decided by the Supreme Court in many cases.

There seems to be no valid objection to imposing the two classes of taxes in the same law. This was done in the act of 1894 and not considered objectionable. The court, referring to it in the Pollock cases, expressly stated that this point did not affect its decision. Pollock v. Farmers' Loan & T. Co. 158 U. S. 636, 39 L. ed. 1125, 16 Sup. Ct. Rep. 912.

The Congress, within constitutional limitations, has plenary power to select the objects of taxation and the methods by which the tax imposed shall be levied, assessed, and collected. It may, with proper uniformity, tax all the property of the taxpayers or only a portion or a certain kind of it. It may impose an excise tax on all business, avocations, or on part of them. It also has almost unlimited power in providing for the selection of the property to be taxed, and all necessary machinery for the assessment of the same for taxation and for the collection of the tax. These principles are elementary. Cooley's Con. Lim. 737, 739; Cooley's Taxation, vol. 1, 602–604.

In the case of Flint v. Stone Tracy Co. 220 U. S. 167, 55 L. ed. 420, 31 Sup. Ct. Rep. 342, it is said:

'We must not forget that the right to select the measure and objects of taxation devolves upon the Congress and not upon the courts, and such selections are valid unless constitutional limitations are overstepped.'

All the authorities agree that the basis of an assessment for taxation may be retrospective. Cooley on Taxation, vol. 1, p. 492.

The same method, it is true, is here provided for assessing the property tax and the excise tax imposed, but I can see no objection to the bill on this account. It is equally applicable to both taxes and makes the machinery less complicated and easier of operation. Direct taxation by reason of the ownership of property and an excise tax upon business are merely different methods by which the same end is reached; that is, by which the taxpayer is made to contribute out of his property to the support of the Government.

As before stated, the provision of the bill requiring the computation of incomes received by taxpayers during the periods mentioned in the bill is merely the basis for the assessment of the tax, and it is well settled that incomes received before the law is passed may be considered in ascertaining the tax to be paid for the first year.

The excise cases decided by the Supreme Court of the United States sustain these conclusions. They are directly in point in so far as the property taxed arises from incomes from business subject to an excise tax and clearly analogous where the income arises from real and personal property, both of which are to be found in this bill.

The court has held in all these cases that the tax to be collected may be measured by the business done, the profits made, the dividends accrued, and the gains made for periods previous to the enactment of the law imposing the tax, in some other cases a part of the year, like the present law, and in others the year previous to that in which the law was enacted.

It is also held that where the basis fixed for the assessment is a percentage on the capital stock or business done by a corporation, and that in this way assets which are exempt from taxation and business not taxable are included in making the assessment, the validity of the tax imposed is not affected.

In Home Ins. Co. v. N. Y. 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593, the tax in question was imposed upon the privilege of the complainant to do business as a corporation within the State and was measured by the extent of the dividends of the corporation of the current year upon the capital stock, some two million dollars of which were invested in bonds of the United States exempt from taxation. The tax was attacked because this mode of assessing the same included the

value of exempt property. The court, in sustaining the tax, said:

'It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of the stock. The statute designates it a tax upon the 'corporate franchises or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be enacted each year. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows.'

The case of the State of Maine v. Grand Trunk Ry. Co. involves an excise tax levied by the State upon railroad corporations for the privilege of exercising their franchise within the State, the tax being fixed by a certain percentage of the transportation receipts of the company, including interstate and foreign commerce, for the previous year. The tax was assailed upon the ground that it was a burden upon interstate commerce and the business done in a former year. The court sustained the tax. In the opinion, among other things, it is said:

'The character of the tax or its validity is not to be determined by the mode adopted in fixing its amount for any specific period or the time of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation is open to the consideration of the State in determining what may be justly exacted for the privilege. * * *

'And if the inquiry of the State as to the value of the privilege were limited to the receipts of certain past years instead of the year in which the tax is collected it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as stated above, simply the means of ascertaining the value of the privilege conferred.'

In Stockdale v. Atlantic Ins. Co. 20 Wall. 341, 22 L. ed. 354, an excise tax assessed upon dividends declared by the

company previously was held to be valid. Mr. Justice Miller in his opinion said:

'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, can not be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of 5 per cent. upon all incomes of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it.'

Flint v. Stone Tracy Co. 220 U. S. 142, 55 L. ed. 410, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312—the corporation-tax case—is the latest excise-tax case. All the cases where excise taxes have been attacked, because in the measurement or assessment of the tax property nontaxable, and profits, incomes, and business accruing previous to the passage of the law, were included and valued, are reviewed, and it is there held that the Government may use these methods in *measuring or assessing* the tax imposed without affecting the validity of the tax.

I think the principle controlling all these cases is the same here involved, and sustains the tax proposed to be imposed.

There is nothing in the amendment requiring the tax to be paid or collected out of the specific moneys constituting the income accruing during said periods, and what the taxpayer does with the moneys constituting his income is immaterial. It can not have the effect to relieve him of the tax imposed upon him as the owner of property of its value. This tax, like all other taxes, is a debt due to the Government, and collectible out of any of the taxpayer's property that may be found. If the law was otherwise, the payment and collection of the tax would be dependent upon the ability of the taxpayer to dispose of his income before the authorities could seize it for the payment of his just contribution to the expenses of the Government.

The statutes of a majority, if not all, of the States provide that property shall be assessed against the owners upon some certain day of the year and that transfers after that shall not affect the assessment. The owner of the property upon the day of the assessment is liable for the tax thereon according

to the assessment made, notwithstanding the general assembly, municipal council, or other taxing power may levy the tax on a subsequent day of the year. The property of the citizens taxed for that year is here measured by that which they own on the day fixed for the assessment, and which is made as of that day. These laws have never been questioned so far as I can find.

The provisions of this bill upon this question are not different from the income-tax laws of England and those heretofore enacted in this country.

The English income tax enacted June 28, 1853, provided that the same should be operative and effective from and after April 5, 1852, and of course included incomes accruing previous to its enactment.

The income tax imposed by Congress August 5, 1861, expressly provided that—

"the tax herein provided shall be assessed upon the annual incomes of the persons hereinafter named for the year next preceding the 1st of January, 1862, and the said taxes when so assessed and made public shall become a lien upon the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid." (12 Stat. at L. 309, chap. 45).

Here the tax was imposed upon the incomes accruing between January 1, 1861, and August 5 of that year, the day of the enactment of the law.

The act of July 14, 1862, superseding the one above stated, provided for the assessment upon incomes received from and after January 1 of that year, or for a period of six months before the act was passed.

The income tax of 1894, enacted in August of that year provided for the taxation of incomes from the beginning of the current year and was attacked upon this ground. The question was not decided in the cases which reached the Supreme Court of the United States, but it was held by the Supreme Court of the District of Columbia in the case of Moore v. Miller, decided January 23, 1895, that there was nothing in the objection. In that case Hagner, J., said:

'This provision is of the same character as those appearing in the former income acts of the United States.

'The first act, passed on the 5th of August, 1861, declared that from and after the 1st of January, 1862, there should be levied an income tax, which should be assessed in the first instance 'upon the annual income for the year preceding the 1st of January, 1862,' thus including in return the income that had accrued during the seven months next preceding the passage of the law.

'The act of the 14th of July, 1862, which superseded the first law, declared that the tax should be levied on the 1st of May, 1863, upon the income of the preceding year ending the 31st of December, 1862, including thereby the six months and a half of the year that had expired at the time the act was passed.

'The English act of 1853, passed on the 28th of June, 1853, declared that the income tax thereby established should be operative from and after the 5th day of the preceding April.

'No authority was quoted in support of this contention, and I have been unable to discover any if it exists.

'But the very point appears to have been decided the other way in 20 Wall. 331, 22 L. ed. 351, Stockdale v. Ins. Co., where Mr. Justice Miller said: 'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past years, can not be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of 5 per cent on all incomes of the previous year, although one tax on it had already been paid; and no one doubted the validity of the act or attempted to resist it.'

In a Pennsylvania case, in which a tax in substance was imposed upon incomes, a similar question was presented and held not to affect the validity of the law:

'This act clearly intended to levy a tax of 3 per cent on the profits or income of the business, and was not meant to tax capital. Profits must necessarily be the net profits of the business, and the Commonwealth was to receive of them 3 per cent. It was in fact a tax upon the income of the business in which the defendants were engaged. The English income tax and the United States income tax are based upon the incomes received in

preceding years. The present United States income tax is laid upon the income of 1862, and the act of Congress of the 5th of August, 1861 (12 Stat. at L. 309, chap. 45), expressly declares that the tax herein provided shall be assessed upon the annual income of the person hereinafter named, for the year next preceding the 1st of January, 1862, and the said taxes, when so assessed and made public, shall become a lien upon the property or other resources of said income for the amount of the same, with the interest and other expenses of collection until paid.

'It is clearly, therefore, perfectly constitutional, as well as expedient, in levying a tax upon profits or income, *to take as the measure of taxation* the profits or income of a preceding year. To tax is legal, and to *assume as a standard* the transactions immediately prior is certainly not unreasonable, particularly when we find it always adopted in exactly similar cases. The tax is graduated upon each individual upon his individual receipts.'

The Wisconsin income tax law went into effect July 5, 1911, but provided for taxing all incomes received during that year. The act was attacked, among other grounds, upon the contention that it was retroactive and void under the constitution of that State. The court is disposing of this question said:

'One further objection we overrule, here without comment, for the reason that it seems very unsubstantial, namely, the objection that the law is retroactive and valid, because assessed on income received during the entire year 1911, while it did not go into effect until July 15 of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously.' (Income Tax cases, 148 Wis. 456, 514, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913A, 1147.

In Wisconsin & M. R. Co. v. Powers (191 U. S. 379, 48 L. ed. 229, 24 Sup. Ct. Rep. 107) a statute was sustained which made the income of the railway company within the States, including interstate earnings, the prima facie measure of the value of the property within the State for the purpose of taxation. In the course of the opinion the court said:

'In form the tax is a tax on 'the property and business of such railroad corporation operated within the State,' computed upon

certain percentages of gross income. The prima facie measure of the plaintiff's gross income is substantially that which was approved in Maine v. Grand Trunk R. Co." 142 U. S. 217, 228, 35 L. ed. 994, 995, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163.

The statute of Minnesota, passed for revenue purposes in 1905, levied a property tax to be computed upon the gross receipts of corporations doing both domestic and interstate business, the last of which, of course, could not be taxed by the State, as such a tax would be a burden upon interstate commerce and in violation of the commerce clause of the Federal Constitution. The Supreme Court of the United States sustained this statute and upheld the tax. In the opinion delivered for the court by Mr. Justice Day it is said:

'Upon the whole we think the statute falls within that class where there has been exercise in good faith of a legitimate taxing power, the measure of which taxation is in part the proceeds of interstate commerce, which could not in itself be taxed and does not fall within that class of statutes uniformly condemned in this court, which show a manifest attempt to burden the conduct of interstate commerce, such power, of course, being beyond the authority of the State.' Express Co. v. Minn. 223 U. S. 335, 56 L. ed. 459, 32 Sup. Ct. Rep. 211.

These two last cases seem to be directly in point. They involved statutes imposing property taxes, measured or assessed by methods which involved in part the computation of property and incomes not within the taxing power of the State. This was but an application of the general principle that the legislature has *the power to prescribe any method of assessment of property for taxation* that may be deemed wise and efficient and illustrates the important *distinction between the subject* of taxation and *the method of assessment* of taxation.

I think the amendment without merit and the provision of the bill called in question constitutional." [2]

A similar provision in Wisconsin was held by the Supreme Court of that State to be valid. "One further objection we overrule here without comment, for the reason that it seems very

[2] Cong. Record, A. D. 1913, Aug. 26, 1913, pp. 4183–4189. See Senate Doc., 171.

unsubstantial, namely, the objection that the law is retroactive and void, because assessed on incomes received during the entire year 1911, while it did not go into effect until July 15th of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously."[3]

§ 14. **Constitutionality of provisions concerning examination of taxpayers.** The constitutionality of the sections of the Revised Statutes which apply to the collection of the income tax, have also been attacked. It has been claimed that the provisions authorizing the court to punish disobedience to the collector's summons as a contempt are not judicial, and consequently cannot be vested in one of the courts of the United States; and furthermore are a denial to the taxpayer of his right to trial by a jury, which is guaranteed him by the Sixth Amendment. The provisions for the examination of the taxpayer and his books have been also criticised as a violation of the Fifth Amendment to the Constitution, by compelling a person to be a witness against himself in a case which is in its nature criminal.

The sections as amended are as follows:

"SECTION 3173:—It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury,

[3] *Income Tax Cases*, 148 Wis. 456, 514, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913 A, 1147.

for which such person, partnership, firm, association, or corporation is liable: *Provided,* That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at

a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

"SECTION 3174.—Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty." [1]

"SEC. 3175.—Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the District Court or to a commissioner of the Circuit Court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the sum-

§ 14. [1] U. S. Rev. Stat. section 3174 (U. S. Comp. Stat. 1901, p. 2067). For note on power to compel the production of corporate books to aid in assessing holder of stock, see 8 L.R.A.(N.S.) 788.

mons and to punish such person for his default or disobedience." [2]

That Congress may grant the courts the power to make an order compelling testimony before the commissioner, or the production of books in a proper case, is established by the decision sustaining the constitutionality of the analogous provisions of the Interstate Commerce Law.[3] The twelfth section of that act provided that:

"For the purposes of this act the commissioner shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

"Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commissioner, or any party to a proceeding before the commissioner, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in cases of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commissioner (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof." [4]

The Circuit Court of the United States dismissed an application for an order compelling the attendance and testimony of witnesses, and the production of books before the commissioner,

[2] U. S. Rev. Stat. § 3175. For note on contempt in refusing to produce books and papers in response to subpœna upon ground that they contain private matter, see 29 L.R.A. (N.S.) 716.

[3] *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 38 L. ed. 1047, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125.

[4] 26 Stat. at L. chap. 128, p. 743 (U. S. Comp. Stat. 1901, p. 3163).

on the ground that this was not a controversy in law or equity, the determination of which could be vested in a court of the United States, and that consequently the section was void.[5] This decision was reversed upon appeal to the Supreme Court by a majority of five to three. Justices HARLAN, GRAY, BROWN, SHIRAS and WHITE voted in the affirmative; Chief Justice FULLER and Justices BREWER and JACKSON in the negative.

Mr. Justice FIELD, who was not present at the argument, took no part in the decision, but his opinion in the previous case of In re Pacific Railway Commission, 32 Fed. 267, indicates that he would have joined the minority.

The reasoning upon which the decision was based is to be found in the following extracts from the opinion of Mr. Justice HARLAN:

"It is to be observed that independently of any question concerning the nature of the matter under investigation by the Commission—however legitimate or however vital to the public interests the inquiry being conducted by that body—the judgment below rests upon the broad ground that no *direct* proceeding to compel the attendance of a witness before the Commission, or to require him to answer questions put to him, or to compel the production of books, documents, or papers in his possession relating to the subject under examination, can be deemed a case or controversy of which, under the Constitution, a court of the United States may take cognizance, even if such proceeding be in form judicial. And the theory upon which the judgment proceeded is applicable alike to corporations and individuals, although by the established doctrine of the courts a railroad corporation may, under legislative sanction and upon making compensation, appropriate private property for the purposes of its right of way, because and only because its road is a public highway established primarily for the convenience of the people and to subserve public objects, and, therefore, subject to governmental control. Cherokee Nation

[5] *In re Interstate Commerce Commission*, 53 Fed. 476, per Gresham, J. See also *In re Pacific Railway Commission*, 32 Fed. 251, 267, per Mr. Justice Field, Sawyer and Sabin, JJ.

v. Kansas Railway Co. 135 U. S. 641, 657, 34 L. ed. 295, 302, 10 Sup. Ct. Rep. 965.

"What is a case or controversy to which, under the Constitution, the judicial power of the United States extends? Referring to the clause of that instrument, which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice MARSHALL, has said: 'This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States. Osborn v. Bank of the United States, 9 Wheat. 738, 819, 6 L. ed. 204, 223. And in Murray v. Hoboken Co. 18 How. 272, 284, 15 L. ed. 372, 377, Mr. Justice CURTIS, after observing that Congress cannot withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity or admiralty, nor, on the other hand, bring under judicial power a matter which, from its nature, is not a subject for judicial determination, said: 'At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' So, in Smith v. Adams, 130 U. S. 173, 32 L. ed. 897, 9 Sup. Ct. Rep. 566, Mr. Justice FIELD, speaking for the court, said that the term 'case' and 'controversies' in the Constitution embraced 'the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs.'

"Testing the present proceeding by these principles, we are

of opinion that it is one that can properly be brought under judicial cognizance.

"We have before us an act of Congress authorizing the Interstate Commerce Commission to summon witnesses and to require the production of books, papers, tariffs, contracts, agreements, and documents relating to the matter under investigation. The constitutionality of this provision, assuming it to be applicable to a matter that may be legally entrusted to an administrative body for investigation, is, we repeat, not disputed and is beyond dispute. Upon every one, therefore, who owes allegiance to the United States, or who is within its jurisdiction, enjoying the protection that its government affords, rests an obligation to respect the national will as thus expressed in conformity with the Constitution. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one, summoned by that body to appear and to testify, the duty of appearing and testifying, and upon any one required to produce such books, papers, tariffs, contracts, agreements, and documents the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the Commission requires at his hands. These propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion. Whether the Commission is entitled to the evidence it seeks, and whether the refusal of the witness to testify or to produce books, papers, etc., in his possession, is or is not in violation of his duty or in derogation of the rights of the United States, seeking to execute a power expressly granted to Congress, are the distinct issues between that body and the witness. They are issues between the United States and those who dispute the validity of an act of Congress and seek to obstruct its enforcement. And these issues, made in the form prescribed by the act of Congress, are so presented that the judicial power is capable of acting on them.

"The question so presented is substantially, if not precisely, that which would arise if the witness was proceeded against

by indictment under an act of Congress declaring it to be an offence against the United States for any one to refuse to testify before the Commission after being duly summoned, or to produce books, papers, etc., in his possession upon notice to do so, or imposing penalties for such refusal to testify or to produce the required books, papers, and documents. A prosecution for such offence or a proceeding by information to recover such penalties would have as its real and ultimate object to compel obedience to the rightful orders of the Commission, while it was exerting the powers given to it by Congress. And such is the sole object of the present direct proceeding. The United States asserts its rights, under the Constitution and laws, to have these appellees answer the questions propounded to them by the Commission, and to produce specified books, papers, etc., in their possession or under their control. It insists that the evidence called for is material in the matter under investigation; that the subject of investigation is within legislative cognizance, and may be inquired of by any tribunal constituted by Congress for that purpose. The appellees deny that any such rights exist in the general government, or that they are under a legal duty, even if such evidence be important or vital in the enforcement of the Interstate Commerce Act, to do what is required of them by the Commission. Thus has arisen a dispute involving rights or claims asserted by the respective parties to it. And the power to determine it directly, and, as between the parties, finally, must reside somewhere. It cannot be that the general government, with all the powers conferred upon it by the people of the United States, is helpless in such an emergency, and is unable to provide some method, judicial in form, and *direct in its operation* for the prompt and conclusive determination of this dispute.

"As the Circuit Court is competent under the law by which it was ordained and established to take jurisdiction of the parties, and as a case arises under the Constitution or laws of the United States when its decision depends upon either, why is not this proceeding judicial in form and instituted for the determination of distinct issues between the parties, as defined by formal pleadings, a case or controversy for judicial cognizance, within the meaning of the Constitution? It must be so regarded, unless, as is contended, Congress is without power to

provide any method for enforcing the statute or compelling obedience to the lawful orders of the Commissioner, except through criminal prosecution or by civil actions to recover penalties imposed for non-compliance with such orders. But no limitation of that kind upon the power of Congress to regulate commerce among the states is justified either by the letter or the spirit of the Constitution. Any such rule of constitutional interpretation, if applied to all the grants of power made to Congress, would defeat the principal objects for which the Constitution was ordained. As the issues are so presented that the judicial power is capable of acting on them finally as between the parties before the court, we cannot adjudge that the mode prescribed for enforcing the lawful orders of the Interstate Commission is not calculated to attain the object for which Congress was given power to regulate interstate commerce. It cannot be so declared unless the incompatability between the Constitution and the act of Congress is clear and strong. Fletcher v. Peck, 6 Cranch. 87, 128, 3 L. ed. 162, 175. In accomplishing the objects of a power granted to it, Congress may employ any one or all the modes that are appropriate to the end in view, taking care only that no mode employed is inconsistent with the limitations of the Constitution.

"We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be vested with, a general power of making an inquiry into the private affairs of the citizen. Kilbourn v. Thompson, 103 U. S. 168, 190, 26 L. ed. 377, 386. We said in Boyd v. United States, 116 U. S. 616, 630, 29 L. ed. 746, 751, 6 Sup. Ct. Rep. 524—and it cannot be too often repeated,—that the principles that embody the essence of the constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice Field, In re Pacific Railway Commission, 32 Fed. 241, 250, of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from as-

sault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value." [6]

"Without the aid of judicial process of some kind, the regulations that Congress may establish in respect to interstate commerce cannot be adequately or efficiently enforced. One mode, as already suggested,—the validity of which is not questioned,—of compelling a witness to testify before the Interstate Commerce Commission, to answer questions propounded to him relating to the matter under investigation and which the law makes it his duty to answer, and to produce books, papers, etc., is to make his refusal to appear and answer, or to produce the documentary evidence called for, an offence against the United States punishable by fine or imprisonment. A criminal prosecution of the witness under such a statute, it is conceded, would be a case or controversy within the meaning of the Constitution, of which a court of the United States could take jurisdiction. Another mode would be to proceed by information to recover any penalty imposed by the statute. A proceeding of that character, it is also conceded, would be a case or controversy of which a court of the United States could take cognizance. If, however, Congress, in its wisdom, authorizes the Commission to bring before a court of the United States for determination the issues between it and a witness, that mode of enforcing the act of Congress, and of compelling the witness to perform his duty, is said not to be judicial, and is beyond the power of Congress to prescribe.

"We cannot assent to any view of the Constitution that concedes the power of Congress to accomplish a named result, indirectly, by particular forms of judicial procedure, but denies its power to accomplish the same result, directly, and by a different proceeding judicial in form. We could not do so without denying to Congress the broad discretion with which it is invested by the Constitution of employing all or any of the means that are appropriate or plainly adapted to an end which has unquestioned power to accomplish, namely, the protection

[6] *Interstate Commerce Commission* L. ed. 1056–1058, 4 Inters. Com. v. *Brimson*, 154 U. S. pp. 474–479, 38 Rep. 545, 14 Sup. Ct. Rep. 1125.

of interstate commerce against improper burdens and discriminations." [7]

"The present proceeding is not merely ancillary and advisory. It is not, as in Gordon's case,[8] one in which the United States seeks from the Circuit Court of the United States an opinion that 'would remain a dead letter, and without any operation upon the rights of the parties.' The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. And that judgment may be enforced by the process of the Circuit Court. Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the government, rests upon the defendants, cannot be directly enforced except by judicial process. One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of Sanborn's case, will be a 'final and indisputable basis of action,' as between the Commission and the defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution.

[7] *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 485, 486, 38 L. ed. 1060, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125.

[8] *Gordon* v. *U. S.*, 117 U. S. 697.

"This view is illustrated by the case of Fong Yue Ting v. United States, 149 U. S. 698, 728, 37 L. ed. 905, 918, 13 Sup. Ct. Rep. 1016, which arose under the act of May 5, 1892, c. 60, prohibiting the coming of Chinese persons into the United States. The act provided for the arrest and removal from the United States of any person of Chinese descent unlawfully within this country, unless such person shall establish, by affirmative proof, to the satisfaction of a justice, judge, or commissioner of the United States before whom he might be brought and tried, his lawful right to remain in the United States. It also authorized the arrest of such person by any customs official, collector of internal revenue, or United States marshal, and taken before a United States judge. This court said: 'When, in the form prescribed by law, the executive officer, acting in behalf of the United States, brings the Chinese laborer before the judge, in order that he may be heard, and the facts upon which depends his right to remain in the country be decided, a case is duly submitted to the judicial power; for here are all the elements of a civil case—a complainant, defendant, and a judge—*actor, reus et judex.* 3 Bl. Com. 25; Osborn v. Bank of the United States, 9 Wheat. 738, 819, 6 L. ed. 204, 223. No formal complaint or pleadings are required, and the want of them does not affect the authority of the judge or the validity of the statute.'

"Another suggestion thrown out in argument against the validity of the twelfth section of the Interstate Commerce Act, in the particular adverted to, is that the defendants are not accorded a right of trial by jury. If, as we have endeavored to show, this proceeding makes a case or controversy within the judicial power of the United States, the issue whether the defendants are under a duty to answer the questions propounded to them, and to produce the books, papers, documents, etc., called for, is manifestly not one for the determination of a jury. The issue presented is not one of fact, but of law exclusively. In such a case, the defendant is no more entitled to a jury than is a defendant in a proceeding by mandamus to compel him, as an officer, to perform a ministerial duty. Of course, the question of punishing the defendants for contempt could not arise before the Commission; for, in a judicial sense, there is no such thing as contempt of a subordinate adminis-

trative body. No question of contempt could arise until the issue of law, in the Circuit Court, is determined adversely to the defendants and they refuse to obey, not the order of the commission, but the final order of the court. And, in matters of contempt, a jury is not required by 'due process of law.' From the very nature of their institution, and that their lawful judgments may be respected and enforced, the courts of the United States possess the power to punish for contempt. And this inherent power is recognized and enforced by a statute expressly authorizing such courts to punish contempts of their authority when manifested by disobedience of their lawful writs, process, orders, rules, decrees, or commands.[9] Surely it cannot be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable, of right, by a jury.

"We are of opinion that a judgment of the Circuit Court of the United States determining the issues presented by the petition of the Interstate Commerce Commission, and by the answers of the appellees, will be a legitimate exertion of judicial authority in a case of controversy to which, by the Constitution, the judicial power of the United States extends. A final order by that court dismissing the petition of the Commission, or requiring the appellees to answer the questions propounded to them, and to produce the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which may be enforced by judicial process." [10]

Mr. Justice Brewer delivered the following strong dissenting opinion with the concurrence of the Chief Justice and Mr. Justice Jackson.

"I agree as to the power of the United States over interstate commerce, but that throws no more light on the real question involved herein than an inquiry into the power of Congress to

[9] Rev. Stat. § 725, 1 Stat. 83, chap. 20, 4 Stat. 487, chap. 99 (U. S. Comp. Stat. 1901, p. 583); *United States* v. *Hudson*, 7 Cranch, 32, 3 L. ed. 259; *Anderson* v. *Dunn*, 6 Wheat. 204, 227, 5 L. ed. 242, 247; *Ex parte Robinson*, 19 Wall. 505, 510, 22 L. ed. 205, 207; *Ex parte Terry*, 128 U. S. 289, 302, 303, 32 L. ed. 405, 408, 9 Sup. Ct. Rep. 77; *Cartwright's Case*, 114 Mass. 230, 238; Foster's Fed. Pr. 5th ed. §§ 428–437.

[10] *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 487–489, 38 L. ed. 1060, 1061, 4 Inters. Com. Rep. 45, 14 Sup. Ct. Rep. 1125.

enact laws would upon the question determined in Kilbourn v. Thompson, 103 U. S. 168, 26 L. ed. 377, of the right of the House of Representatives to punish as for contempt one who refused to disclose the business of a real estate partnership of which he was a member. The power of Congress to use all reasonable and proper means for exercising its control over interstate commerce carries with it no right to break down the barriers between judicial and administrative duties, or to make courts the mere agents to assist an administrative body in the prosecution of its inquiries. For, if the power exists, as is affirmed by this decision, it carries with it the power to make courts the mere assistants of every administrative board or executive officer in the pursuit of any information desired or in the execution of any duties imposed. It informs Congress that the only mistake it made in the Kilbourn case was in itself attempting to punish for contempt, and that hereafter the same result can be accomplished by an act requiring the courts to punish for contempt those who refuse to answer questions put by either house, or any committee thereof.

"It must be borne in mind that this is purely and soley a proceeding for contempt. No action is pending in the court to enforce a right or redress a wrong, public or private. No inquiry is being carried on in it with a view to the punishment of crime, nothing sought to be done for the perpetration of testimony or in aid of any judicial proceeding. The delinquent is punished for a contempt of court in refusing to testify before a commission in aid of an investigation carried on by such commission. What is this power vested in courts of punishment for contempt, and for what purpose is it vested? It is a power of summary punishment and existing to enable the courts to exercise their judicial duties. 'Contempt of court is a specific criminal offense.' New Orleans v. New York Mail SS. Co. 20 Wall. 392, 22 L. ed. 357. In Anderson v. Dunn, 6 Wheat. 204, 227, 5 L. ed. 242, 247, it was said that 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence and submission to their lawful mandates.' So in Ex parte Robinson, 19 Wall. 505, 510, 22 L. ed. 205, 207: 'The power to punish for contempts is inherent in all courts; its existence is essential to the preser-

vation of order in judicial proceedings, and to the enforcements of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.' And in Re Cooper, 32 Vt. 253, 257: 'The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute but arising from necessity; implied because it is necessary to the exercise of all other powers.'

"A contempt presupposes some act derogatory to the power and authority of the court. But before this proceeding was initiated the only authority disregarded was that of the commission. The court treats such acts derogatory to the powers of the commission as derogatory to its own, and punishes, as for a contempt of its own authority, one who disobeys the order of the commission. It is no sound answer to say that the court orders the witness to testify and punishes for disobedience of that order. The real wrong is in not testifying before the commission, and that is the ground of the punishment. Otherwise any disregard of any duty can be treated as a contempt of court and punished as such. It will be sufficient to cite the delinquent and order his punishment as for a contempt of court unless he discharges that duty. His failure to obey the order of the court is only the nominal, while the failure to discharge the prior duty is the real ground of punishment. No forms of statement can change the substantial fact that the inherent power of courts to punish for contempt is exercised, not to preserve the authority of the court, not in aid of proceedings carried on in them, but to aid a merely administrative body, and to compel obedience to its requirements. It makes the courts the mere assistants of a commission.

"It is said that this proceeding is substantially, if not precisely, similar to that which would arise if Congress had passed an act imposing penalties on parties refusing to testify before a commission and a proceeding was commenced to recover such penalties. But surely the differences are vital. If such proceeding was a criminal prosecution, defendants would have the constitutional guarantee of a trial by jury, and this, too, in an action at law if the amount of the penalty exceeded $20. By

making it a proceeding for contempt, these constitutional protections are evaded. Further, there is no penalty prescribed. Refusal to answer is not made an offense, misdemeanor, or felony.

"Suppose a law was enacted making criminal the refusal to answer questions put by a commission (and a statute would be necessary before such refusal could be adjudged criminal, for there are no common-law offenses against the United States —United States v. Eaton, 144 U. S. 677, 36 L. ed. 591, 12 Sup. Ct. Rep. 764), would it not be necessary that the stat ute define the questions, or at least the scope of the questions to be asked? Would not an act be void for indefiniteness and lack of certainty which simply made criminal the refusal to answered relevant questions in any proper investigation carried on before a commission? Would it not be like the famous Chinese statute:

" 'Whoever is guilty of improper conduct, and of such as is contrary to the spirit of the laws, though not a breach of any specific part of it, shall be punished at least forty blows; and when the impropriety is of a serious nature, with eighty blows.'

"Could it be left to the commission to select the matter of investigation, determine the scope of the inquiry, and thus, as it were, create the crime?

"Can all these difficulties be avoided by bringing the refusal to testify before a commission within the reach of the comprehensive inherent power of the courts to preserve their authority by proceedings for contempt?

"But again, it is said that the act of Congress imposes upon all persons and corporations engaged in interstate commerce a duty to answer every proper question which the commission may see fit to ask, and that a refusal to answer constitutes a refusal to discharge a duty upon rightful demand. It is true that authority is conferred upon the commission to obtain information, but the act does not impose the duty to furnish it upon all persons interested in interstate commerce; and Congress cannot invest the commission with discretionary power to create or not create a duty. If, when a question is asked, a duty is established, then the court would have no power to do anything except to enforce the act of the commission, if valid, or

punish its violation without inquiry, which, as has been stated, would make the court the mere ministerial agent of the commission. If the duty is not established, then the court is called upon to take part in a mere inquiry as to whether it would be lawful or expedient that the duty be established. It is not pretended that the court can take cognizance of the whole investigation on petition, and this application is not a part of any judicial proceeding, nor could the order adjudicate anything. It is clear that the duty, if it exists at all, is a political and not a judicial duty. Would mandamus lie to compel the discharge of this duty? Yet mandamus is the recognized proceeding for the enforcement of a duty.

"It may be that it is the duty of every citizen to give information to the commission when demanded, but it is no more a duty than it is to avoid murder or other crimes; to lead a life of social purity; to avoid fraud in business transactions, or neglect of other duties of good citizenship. Will it be pretended that these obligations can be enforced by the courts through proceedings as for contempt?

"To say that there is a case, something that calls for judicial action, because there are parties on the one side or on the other, is a breadth of definition hitherto unrecognized. Every effort at administrative or executive action, which is not voluntarily assented to by those whom it affects creates a dispute between parties. Can it be that every such dispute justifies an appeal to the courts, and presents a case for judicial action? If so, there is nothing which any administrative body or executive officer shall attempt to do which cannot be carried into the courts, and every failure to comply with the orders of such body or officer makes the delinquent subject to punishment by the process of contempt. Hitherto the power to punish for contempt has been regarded as a power lodged in judges and courts to compel obedience to their orders, decrees, and judgments, and to support their authority.

"This is something more important than a mere question of the form of procedure. It goes to the essential differences between judicial and legislative action. If this power of the courts can be invoked to aid the inquiries of any administrative body, or enforce the orders of any executive officer, why may not the power to punish for contempt be vested directly in the

administrative board or in the executive officer? Why call in the court to act as a mere tool? If the interstate commerce commission can rightfully invoke the power of the courts to punish as for contempt those who refuse to answer their questions, why may not like power be given to any prosecuting attorney, and he be authorized to summon witnesses, those for as well as those against the government, and in advance compel them, through the agency of the courts, to disclose all the evidence they can give on any expected trial? If these appellees have committed crime, punishment therefor comes only through the courts, and by the recognized procedure of information or indictment. They cannot be tried by the commission for any act done.

"One often declared difference between judicial and legislative power is that the former determines the rightfulness of acts done; the latter prescribes the rule for acts to be done. The one construes what has been; the other determines what shall be. As said in Cooley's Constitutional Limitations, side page 92:

" 'In fine the law is applied by the one, and made by the other. To do the first, therefore,—to compare the claims of parties with the law of the land before established,—is in its nature a judicial act. But to do the last—to pass new rules for the regulation of new controversies—is in its nature a legislative act; and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct;" because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated.'

"So, for whatever the appellees have done in the past, whether they have violated any law of the land or not, an inquiry is to be made in and by the courts. The judicial power cannot be invoked to sustain an investigation into past conduct which, when disclosed, may or may not be at the will of an administrative board or executive officer presented for judicial consideration or action. It is not meant to be affirmed that no inquiry can be made into past conduct or actions except through the power and processes of the courts. On the contrary, the full power of legislative or executive departments to inquire into what has been is conceded. But if designed to aid legisla-

tive or executive action it must be by legislative or executive proceedings. Can the courts be turned into commissions of inquiry in aid of legislative action?

"In short, and to sum it up in a word: If these appellees have violated any law their punishment should be sought in the ordinary way, by prosecution therefor in the courts. If they have violated no law, and the simple purpose is to elicit information for the guidance of the commission or the legislature, let that information be sought by the ordinary processes of legislative or administrative bodies.

"Take a familiar illustration: Once in ten years a census is ordered by authority of Congress, and the scope of that census, constantly enlarged, is to elicit from the citizens of the United States information as to a variety of topics. No thought of punishment for past misdeeds enters into such an inquiry. Information, and that only, is sought. It is unquestionably the duty of every citizen to respond to the inquiries made by the census officers and furnish the information desired. Can it be that courts can be authorized to make the refusal of a citizen to furnish any such desired information a contempt of their authority and to be punished as such? There is no question of the lawful power of Congress to elicit this information; possibly none as to its power to provide that a refusal to give the information shall be deemed a misdemeanor and prosecuted and punished as such. But it seems to me to obliterate all the historic distinction between judicial and legislative or administrative proceedings to say that the courts can be called upon to punish as for a contempt of their authority a mere refusal to respond to this administrative inquiry as to facts.

"This question was fully considered by Mr. Justice FIELD, while holding the Circuit Court, Re Pacific R. Com. 32 Fed. 251, and the power of Congress to make the courts the mere assistants of an investigating committee was most emphatically denied.

"I am authorized to say that the Chief Justice and Mr. Justice JACKSON concur in the views herein expressed." [11]

On account of the division in the Supreme Court upon the

[11] *Interstate Commerce Commis sion* v. *Brimson*, 155 U. S. 1, 39 L. ed. 49, 15 Sup. Ct. Rep. 19.

question, it is possible that the point might be reconsidered. The Interstate Commerce Act is, however, in this respect, far different from the Revised Statutes regulating examinations under the Income Tax. By the Interstate Commerce Act, upon the failure of a witness to obey a subpœna, application is made to the court by the commission, through the district attorney, for an order directing the appearance of the witness. This order is not granted until the witness has had an opportunity to answer setting up his objections and a trial of the issue thus raised. It is not until after disobedience to the court that the witness may be punished for a contempt. On the other hand, section 3175 of the Revised Statutes of the United States provides that an attachment may be issued by the court, as for a contempt upon the disobedience of a taxpayer to a summons issued by the collector. Upon the return of that attachment with the body of the taxpayer, the court is directed to hear the case. "and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience." If this statute be construed in accordance with its apparent meaning, to authorize the court to punish a party for contempt in disobedience to the summons of the collector, and not to authorize the court to enter an order, directing the appearance and testimony of the taxpayer, and subsequently thereto, to punish the taxpayer for disobedience of the order, not for disobedience of the summons, it might be held to be unconstitutional as impairing the right of the taxpayer to trial by jury for the offense of disobeying the collector's summons, as well as for other reasons. Under the old act, the question was never brought to the Supreme Court of the United States. It was held, that notwithstanding the language of the statute, directing the issue of an attachment upon proof by the collector of disobedience to the summons, it was the better practice to proceed by an order to show cause.[12] Other decisions hold the act constitutional.[13]

[12] *In re Chadwick*, Lowell, 439, Fed. Cas. No. 11,097; *Matter of Meador*, 1 Abb. U. S. 317, 2 Am. Law Times, 140, Fed. Cas. No. 9,375; *Stanwood* v. *Green*, 2 Am. Law Rec. 107, 3 Am. Law Times, 154, *infra*.

[13] See *Re Phillips*,

The question, however, deserves, and will undoubtedly receive, the careful consideration of the Supreme Court when brought before it by means of a writ of *habeas corpus,* or otherwise.

§ 15. Constitutionality of the grant of power to examine books of taxpayers. A further question arises concerning the power conferred upon the collector to examine a taxpayer and the latter's books of account in case of a failure to render a list or return. The Revised Statutes as amended in the Act of October 3, 1913, provide, "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be

Times, 133, Fed. Cas. No. 13,301; v. *Fordyce,* 13 Int. Rev. Rec. 77, *Perry* v. *Newsome,* 10 Int. Rev. Rec. Fed. Cas. No. 13,300.
·20, Fed. Cas. No. 11,009; *Stanwood*

summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned." [1]

The act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000.[2]

The object of such examination is consequently to ascertain whether the examined party is liable to a penalty for failing to make a return; that is, to a punishment for a violation of the law. It has been held that "suits for penalties and forfeitures incurred by the commission of offenses against the law, are of this *quasi*-criminal nature; we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure—and an unreasonable search and seizure—within the meaning of the Fourth Amendment." [3]

A section of a New York statute imposing a tax upon transfers of shares of stock of corporation was held to be unconstitutional because it made it criminal for a stockbroker to refuse to permit the Comptroller to inspect his books to ascertain what transfers had been made upon which the tax had not been paid,

§ 15. [1] U. S. Rev. Stat. § 3173, U. S. Comp. Stat. 1901, p. 2065, as amended by Act of Oct. 3, 1913, Subsection I. See also U. S. Rev. Stat. § 3176.

[2] Subsection F.

[3] *Boyd* v. *United States*, 116 U. S. 634, 635, 29 L. ed. 752, 753, 6 Sup. Ct. Rep. 524; see also *State of Texas* v. *Day Land & Cattle Co.* 41 Fed. 228, 230; *State of Iowa* v. *Chicago B & Q. R. Co.* 3 L.R.A. 554, 37 Fed. 497, 500; *United States* v. *Denicke*, 35 Fed. 407, 410.

for the purpose of procuring information to base an action for the recovery of the tax and any penalty thereby incurred.[4]

§ 16. **Constitutionality of distress proceedings.** The provisions of the Revised Statutes authorizing a collection of taxes by distraint and sale[1] have been held constitutional.[2] The Supreme Court said, speaking through Mr. Justice SWAYNE:

"The proceedings of the collector were not in conflict with the Amendment to the Constitution which declares that no person shall be deprived of life, *or property,* without 'due process of law.' The power to distrain personal property for the payment of taxes is almost as old as the common law, Cooley, Tax. 302. The Constitution gives to Congress the power 'To lay and collect taxes, duties, imposts and excises. Except as to exports, no limit to the exercise of the power is prescribed. In McCulloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579, Chief Justice MARSHALL said, 'The power to tax involves the power to destroy.' Why is it not competent for Congress to apply to realty, as well as personalty, the power to distrain and sell when necessary to enforce the payment of a tax? It is only the further legitimate exercise of the same power for the same purpose. In Murray v. Hoboken L. Co. 18 How. 274, 15 L. ed. 373, this court held that an act of Congress authorizing a warrant to issue, without oath, against a public debtor, for the seizure of his property, was valid; that the warrant was conclusive evidence of the facts recited in it, and that the proceeding was 'due process of law,' in that case. See also, De Treville v. Smalls, 98 U. S. 517, 25 L. ed. 174; Sherry v. McKinley, 99 U. S. 496, 25 L. ed. 330; Miller v. U. S. 11 Wall. 268, 20 L. ed. 135; Tyler v. Defrees, 11 Wall. 331, 20 L. ed. 161.

"The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreason. If the laws here in question involved

[4] *People ex rel. Ferguson* v. *Reardon,* 197 N. Y. 236, 243, 27 L.R.A. (N.S.) 141, 134 Am. St. Rep. 871, 90 N. E. 829. See *Robson* v. *Doyle,* 191 Ill. 566, 61 N. E. 435.

§ 16. [1] U. S. Rev. Stat. §§ 3187, 3192, U. S. Comp. Stat. 1901, pp. 2073, 2075.

[2] *Springer* v. *U. S.* 102 U. S. 586, 26 L. ed. 253.

any wrong or unnecessary harshness, it was for Congress, or the people who make congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the Government." [3]

[3] *Springer* v. *U. S.* 102 U. S. 586, 26 L. ed. 253.

CHAPTER III.

THE INCIDENCE OF THE TAX.[1]

§ 17. **Nature of the tax.** Whatever else may be said or thought about the act of taxation, it will hardly be questioned that the one fundamental and unchangeable element of it is to take property. A tax on the person, pure and simple, without reference to property, does not exist. To take an aliquot part of the human body, after the manner of John of England in extracting the teeth of his wealthy Jewish subjects for purpose of revenue, is to commit mayhem and torture; it is not to tax. Whatever may be attempted, there is no taxation until property is taken.

The limitations of the power to tax, therefore, are limitations of the power to take property. Without discussion, it may be fairly assumed as axiomatic and self-evident that in modern civilization and in times of peace a taking by way of taxation must be:—

1. By the government;
2. Of property within its territorial limits;
3. For the purpose of its own continued existence; and
4. According to some rule of proportion. Other limitations there may be, but they are not relevant to the present purpose.

With reference to the new income tax law, two questions are immediately presented. 1. What property is taken; and 2. What is the rule of proprotion in taking it. The first of these questions will be treated in this chapter, and the second is reserved for the following chapter.

The act itself levies a tax "annually upon the entire net income arising or accruing from all sources in the preceding cal-

§ 17. [1] The first two sections of this chapter were prepared by Mr. Everett V. Abbott, of the New York bar, as a discussion of the effect in this respect of the Income Tax of 1894. They are inserted here, *mutatis mutandis* since they contain valuable suggestions, although the author expresses no opinion concerning the soundness of his contentions.

endar year to every citizen of the United States," and a like tax "annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States." A strict construction of these phrases would limit the tax to such income as a specific fund out of which, if it could, the United States would take its aliquot share. Under that construction the right of the national government to collect its taxes would depend upon its ability to reach that particular fund; and if for any reason the fund should vanish before the United States could reach it, no tax could be collected.

Some support is given to this view by such a case as that of New York, etc. Railroad Company v. Pennsylvania, in which the Supreme Court of the United States [2] decided that the State of Pennsylvania could not require a railroad organized and existing under the laws of the State of New York to reserve out of a fund situated in the City of New York and devoted to the payment of dividends, a tax on so much of the dividends as was payable to citizens of Pennsylvania, although the railroad company, with the consent of the State of Pennsylvania, owned and operated a considerable portion of its road within the territorial limits of the State of Pennsylvania. The tax in question was a State tax, but the question is not substantially different from that involved under the present law, and in fact it was not treated as one of construction. If the tax were on dividends in the hands of the corporation as a specific fund, clearly the fund was not within reach of the state's taxing process. As Mr. Justice HARLAN says in his opinion, at page 646, "The money in the hands of the company in New York to be applied by it in the payment of interest, which by the terms of the contract is payable in New York and not elsewhere, is property beyond the jurisdiction of Pennsylvania." If, however, the tax had been on the general property of the corporation, inasmuch as a part of that property was in the State of Pennsylvania, the state could, subject to all relevant constitutional prohibitions, have collected it; and so much is impliedly recognized by the learned justice, at page 643. "Nor can the right of the company to enjoy the privileges so obtained [that

[2] 153 U. S. 628, 38 L. ed. 846, 14 Sup. Ct. Rep. 952.

is by state grant] be burdened with conditions not prescribed * * * except such as the State in the exercise of its police powers for purposes of taxation and for other public objects may legally impose in respect to business carried on and property situated within its limits."

Probably, however, the narrow construction just indicated would not prevail. Although the act is not very clearly drawn, still it could hardly be questioned that the intent was to go far beyond incomes as itself the only specific fund. To hold otherwise would be in effect to render the whole legislation nugatory. It would open too many doors for evasion of the tax.

There is only one alternative. The tax is a tax upon general property, without distinction of form as principal or income, and it follows that income is merely the measure of the tax. This view of the statute undoubtedly accords with the general intention of the legislature, and is the one least open to objection. The phraseology of the act is not very material on the question. All such acts are practically interpreted according to this canon, and unless the act were extremely specific in its terms, it would seem difficult, if not impossible, to hold otherwise. Under the former statutes imposing a tax on dividends, for example, it was held that dividends earned, declared, and paid within the confederate lines during the war were, nevertheless, subject to the tax, and a tax was actually collected on such dividends after the war was concluded. It is clear that such dividends were at no time as a fund within the *de facto* jurisdiction of the United States; but some of the property of the corporation was within the jurisdiction, and it was quite competent for the United States to collect the tax out of any property it could reach long after the dividends had disappeared from view.[3] In that case and in two others,[4] the court declared the tax to be an excise tax on the corporation, and while it is not entirely clear what was meant by the term and the court does not in fact attempt to define it, it is probable that the court regarded the tax in question as laid upon the general property of the corporation and measured by dividends.

[3] *Memphis & C. R. Co.* v. *United States*, 108 U. S. 228, 27 L. ed. 711, 2 Sup. Ct. Rep. 482.

[4] *Michigan C. R. Co.* v. *Collector* (*Michigan C. R. Co.* v. *Slack*) 100 U. S. 595, 25 L. ed. 647; *United States* v. *Erie R. Co.* 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223.

Such an interpretation relieves the tax of the possible objection that it is retroactive. If income is merely the measure of the tax, it is clearly quite immaterial whether the income that is adopted as a measure is that of the past or of the present or of the future, provided only it is practically ascertainable. As Mr. Justice READ of Pennsylvania, says: "It is clearly * * * perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of the preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable." [5]

§ 18. Incidence of the tax with respect to property. As a question of the actual realization of the object of the statute, it is obvious that the only property out of which the tax can be collected is that which is actually situated within the boundaries of the United States,[1] including Porto Rico and the Philippine Islands. Hawaii is not mentioned in the statute. And by well recognized principles of international law, all property so situated is subject to taxation by this Government. "There is nothing very poetic about tax laws. Wherever they find property, except what is devoted to public and charitable uses, they claim a contribution for its protection, without any special respect to the owner or his occupation, and without reflecting much on questions of generosity or courtesy." [2] Since the present act contains in terms no exemption of property situated within the United States, presumably there is no such exemption from the levy except such as is by Federal law exempt from all taxation, as for example implements of trade.[3] It will hardly be questioned that if a tax is in proper mode found to be due and payable, all property of the taxpayer (apart from the exception just noted) within the territorial jurisdiction of our Government would be subjected to its payment.

[5] *Drexel* v. *Com.* 46 Pa. 31, at p. 40.

§ 18. [1] *New York etc., Railroad* v. *Pennsylvania*, 153 U. S. 628, 38 L. ed. 846, 24 Sup. Ct. Rep. 952, per Gray, J., and see cases cited; *Hoyt* v. *Commissioners*, 23 N. Y. 224.

[2] Lowrie, C. J., in *Finley* v. *The City of Philadelphia*, 32 Pa. 381, at p. 382.

[3] U. S. Rev. Stat. § 3187 (U. S. Comp. Stat. 1901, p. 2073).

As to all corporeal property, therefore, so much as lies within our boundaries is subject to tax and, for reasons readily appreciated, such property situated in other countries is exempt.

As to incorporeal property, on the other hand, in which are included all debts, obligations, choses in action, and rights of every kind and description, the matter is very different, and the question may well be raised in important issues, whether or not Congress has attempted to act extra-territorially in some of its provisions.[4] This is presented whenever the attempt is made to collect a tax upon property consisting of a debt or other obligation of a citizen or resident of the United States to a creditor who is a non-resident alien or is otherwise not subject personally to the taxing power of our Government. Perhaps no question was so earnestly, even obstinately, presented to the attention of the Supreme Court under the former acts as this, and it will be shown later that it is possible at the present time to raise the same objection. The issue assumed two forms under the prior legislation, one of which may well be repeated.

The first and simpler of these arose under the sections of the acts requiring corporations to reserve the tax out of funds in their hands devoted to the payment of interest on their bonded indebtedness. In Railroad Company v. Jackson,[5] a non-resident alien bondholder sued the railroad company to recover the amount of the tax deducted by it from interest payable on its bonds. The court held that the act of June 30th, 1864, under which the company claimed the protection, was not intended to apply to non-resident aliens, and, therefore, that the deduction which the company claimed to make was in fact unauthorized. The court went on to say, at p. 269, "Congress has since, in express terms * * * imposed a tax on alien non-resident bondholders. The question hereafter will be, not whether the laws embrace the alien non-resident bondholder, but whether it is competent for Congress to impose it; upon which we express no opinion." The question was accordingly raised a second time.[6] The court again declined to consider the

[4] On general question when debt may have situs for the purpose of taxation apart from domicil of creditor, see notes in 2 L.R.A.(N.S.) 637, and 14 L.R.A.(N.S.) 493.

[5] 7 Wall. 262, 19 L. ed. 88.

[6] *Railroad Company* v. *Collector*, 100 U. S. 595, 25 L. ed. 647; *U. S.* v. *Erie Railway Co.* 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223. *Cf. supra*, § 10.

precise issue. It decided that the tax was an excise tax on the business of the corporation and, inasmuch as the parties to the action were the United States and the taxpayers, refused to consider the rights as existing between the taxpayer and the bondholder, saying at page 597, "Whether Congress having the power to enforce the law has power to levy * * * a tax on the interest due by a citizen of the United States to one who is not domiciled within our limits, and who owes the Government no allegiance, is a question which we do not think necessary to the decision of this case." It is interesting to compare the attitude of the English courts, as evinced by the opinion of BRETT, Master of the Rolls, in a similar case: "I am unwilling to give an opinion whether the foreign debenture holder can be made to repay the company, because such debenture holder is not now before us, but I confess I have a strong suspicion that those who drew this act meant, as far as English legislation can do so, to make him liable; but whether the foreign debenture holder can be made to pay or not, that is to say, whether the company in paying him can or not deduct the tax, is immaterial. If they can, there is no hardship; if they cannot, the hardship is imposed upon them by the plain terms of the act." [7]

The question, it will be seen, is thus left open so far as the relations of the bond-holder to the corporation are concerned. It is submitted, however, that the true view of the situation is this: The fund devoted to the payment of interest is a part of the property or assets of the corporation, until it is actually paid over in such form or to such persons as to discharge the company from its obligation; from that time forward it is property of the obligee. So long as it is within the hands of the company, it is of course within the taxing power of the national Government; so long also as it remains within the territorial limits of the Union, it is within the taxing power of the Government, even though it may have passed from the hands of the company to those of somebody authorized to receive it on the part of the debenture holder. At any rate, so long as it is in this country, it is within the actual taxing power, and Congress might well undertake to raise revenue from it.

The question, however, whether by so doing Congress can release the company from its obligation, is clearly a wholly

[7] *Alexandria Water Co.* v. *Musgrave*, 11 Q. B. Div. 174, at p. 179.

different question. If the tax is levied and taken out of the property of the corporation, it by no means follows that the corporation is thereby relieved from the burden of paying his full quota of interest to the foreign bondholder. That is now an open question at Washington. Whether that result would follow, might present a grave question of international law and the comity of nations. It might well be, as Mr. Justice BRADLEY intimates in his concurring opinion in the case of the United States v. Erie Railway Company,[8] that the foreign bondholder suing the railroad company in this country would be met by a plea of payment which would be sustained by the court, but that if he brought his action in his own courts, the plea would not be allowed. This point has not been raised between the foreign bondholder and a domestic corporation under any Federal statute, but it was raised under a State law and decided adversely to the power of the State legislature, in the case of the State Tax on Foreign Held Bonds.[9] It was then decided that such a provision in the State statute was unconstitutional as impairing the obligation of contracts. That inhibition does not apply to the acts of Congress, and it is seriously debatable whether international law or the comity of nations furnishes any corresponding inhibition.

This much is clear, that, until the obligor is released *pro tanto* from his obligation, or, to look at the matter in the other light, until the obligee is debarred *pro tanto* from collecting his debt, it is not the obligee who is taxed. Moreover, if the intent to reach the obligee is to be effective, the bar must be absolute in physical fact as in legal theory. So long as he can in fact collect his debt, so long he is in fact not taxed.

In the case of United States v. Railroad Company,[10] the creditor was a municipal corporation whose property it was decided was exempt from taxation by the Federal Government. It was therefore held in that case that the taxing officers of the United States could not collect the tax on the debt, the unexpressed but none the less necessary implication being that the

[8] 106 U. S. 327, the concurring opinion is at page 703, 27 L. ed. 151, 1 Sup. Ct. Rep. 223. It is quoted *supra*, § 15.

[9] 15 Wall. 300, 21 L. ed. 179. For note on corporate taxation as affected by contract clause in Federal Constitution, see 60 L.R.A. 33.

[10] 17 Wall. 322, 21 L. ed. 597.

Government could not effect a valid release of the railroad company from its obligation to the city. It is submitted, therefore, that there is no such thing as taxing a debt in the hands of the debtor, unless both parties are so within the jurisdiction of the United States that the debtor is absolutely relieved from the possibility of being subjected to double payment of his debt.

The second and more difficult of the two cases arose with reference to the tax on dividends and involved the same question but in a different form. The obligation to pay dividends is not a fixed and liquidated obligation. A dividend is essentially a payment out of surplus earnings over running expenses, and is consequently contingent. It depends upon two elements: first, the receipts of the corporation; and secondly, its necessary disbursements in the conduct of its business. If a dividend is declared, it thereupon becomes a debt of the corporation to the stockholder, it is a liquidated sum. To tax that debt so liquidated, or to attempt to tax it, will present all the objections which have been urged against the attempted taxation of interest. Whether it would be effectual as taxation in the hands of the debtor, depends upon whether the creditor is also within the jurisdiction of Congress.

Before, however, the dividend becomes a liquidated debt, is it taxable? The shareholder is entitled to his ratable proportion of surplus profits, that is, his ratable proportion of earnings over expenses. If, therefore, the tax on dividends be regarded as an expense of the business, then the shareholder is entitled only to his proportion of the surplus over the tax as well as over the other expenses; and the tax having been taken out of the assets of the corporation, the creditor, whether citizen or alien, is entitled only to his proprotionate share of what remains. Congress, therefore, may in this view, safely take the tax out of the assets of the corporation without subjecting the corporation to any double liability.

The Supreme Court, however, has decided, that a tax on dividends imposed by a state is not an expense of the business.[11]

[11] *Central National Bank* v. *U. S.* 137 U. S. 355, 34 L. ed. 703, 11 Sup. Ct. Rep. 126. On general question of duty of corporation to collect taxes upon its shares of stock, see note in 58 L.R.A. 588.

An action was brought by the United States for taxes on profits due by the defendant bank. As an affirmative defense, the bank averred that under the statute of New York it had paid a municipal tax levied by that State against the stockholders on the value of its shares of capital stock owned by them respectively, but required to be paid over to the proper State officers by the bank out of its funds and deducted ratably from the dividends to be paid by it to stockholders. The court held that such a tax was a tax on the stockholder and not, therefore, an expense of the business. Mr. Justice HARLAN says, at page 363, "That the amount paid by the bank to the state in the years 1866, 1867, 1868 and 1870 came from dividends declared by it to be due and payable to stockholders as part of its earnings, income, or gains, is entirely clear, because they were from dividends so declared. The bank recognized its obligation to pay and did pay the tax assessed by the state upon shares owned by stockholder. It was not required to retain the amount of taxes due the state, except from 'dividends belonging to such stockholders.' The tax constituted a claim against stockholders only, and the bank was made simply an agent to collect them for the State. Their retention by the bank out of dividends declared due to stockholders was a convenient mode adopted by the State to collect its taxes. The circuit judge well said that in legal effect, the retaining by the bank of the amount of the tax assessed against stockholders was the same as if it had paid the whole dividend to stockholders and the latter had handed back the sum due from them for municipal taxes and authorized the bank to pay it. For these reasons, the bank had no right to omit from its return a statement of the sums retained by it for the State out of dividends to stockholders in the years 1866, 1867, 1868 and 1870."

The argument of the learned justice might be applied to the tax imposed by the act under consideration. The statute first imposes a tax on the amounts paid to shareholders (section 33), and it also provides (section28), "That in computing the income of any person, corporation, company, or association, there shall not be included the amount received from any person, corporation, company, or association, as dividends upon the stock of such corporation, company, or association, if the tax of two per centum has been paid upon its net profits by said corpora-

tion, company, or association, as required by this act." It might be argued that the act is therefore an attempt, not to impose the tax on the debtor, but to impose it on the creditor. If such be the case, it would follow within the reasoning of the learned court that the tax is not to be regarded as an expense of the corporation.

The argument that the tax on dividends is not an expense of the business of the corporation depends upon the intention of Congress to make the burden of the tax fall on the shareholder. To effect that intention, in the case of dividends as in the case of interest, Congress must find some means of effecting a *de facto* reduction of the shareholder's claim. The argument is again brought to the point that Congress must have such jurisdiction of the person of the creditor that its enactment shall have the full force and effect of being a bar to the actual collection by the creditor of his full claim.

With reference to State, county, and municipal corporations, Congress is under a legal disability to diminish their incomes, and it was therefore held that the tax could not be deducted from interest due to such corporations.[12] There is no judicial decision as to the tax on dividends under the former acts, but there are two rulings by United States Attorney-Generals to the effect that the tax cannot be collected as against such corporations,[13] rulings whose correctness will hardly be questioned.

As to non-resident aliens the question of the tax on dividends has not been directly decided. It is submitted, however, that so long as such aliens are permitted by their own laws to bring suit and recover judgment in their own courts to the full value of the obligation without deduction for the tax, there is not the complete bar which is necessary to subject them actually to the tax. If they were so fortunate as to get jurisdiction in their own courts of a corporation whose dividends our Congress was seeking to tax, they could sue on that judgment in our courts and thereby recover the full amount of the debt. The tax would in that event fall solely on the corporation, and they would go

[12] *U. S.* v. *Railway Co.* 17 Wall. 322, 21 L. ed. 597.

[13] *Attorney-General* v. *Stanbery*, 12 Ops. Atty.-Gen. 277; *Attorney-General* v. *Akerman*, 13 Ops. Atty.-Gen. 439.

harmless. If, however, even in their own courts aliens could recover only a diminished dividend, the tax would in reality fall on them and the intention of Congress would be effectuated.

The construction, however, of the present statute is then possible, that Congress intends to make the tax fall on the profits of the corporation, even though stockholder is not in fact reached.

The whole matter of the collection of the tax on property consisting of a chose in action when the owner is not within the taxing jurisdiction of the Government may be summarized thus:

1. The obligee is not in fact taxed unless he is in fact debarred from collecting his full debt.

2. Whether the Government intends, although it cannot protect the obligor, nevertheless, to tax him and leave him to shift as best he may in his relations to his obligee is a matter of construction of the taxing act.

3. To this may be added by way of general consideration, that such a construction is harsh and ought not to be adopted save in a clear case.

§ 19. **Incidence of the tax with respect to persons.** The Statute provides "That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade or profession carried on in the United States by persons residing elsewhere." [1]

Under that section four possible cases will arise. Two are of citizens, with reference to their residence or nonresidence, and two are of aliens, with reference likewise to their residence or non-residence. There is no question as to the first

[1] Act of Oct 3, 1913, Subsec. A, subd. 1.

two, that the whole income of every citizen whether residing at home or abroad is taxed; it is so specifically provided in the act. Similarly, it is expressly provided in the act that every person residing in the United States shall pay a tax upon all his income, from whatever source derived, which without question includes all resident aliens. Whatever, therefore, the power of Congress may be, its intent is clear, that in case of non-resident aliens the only measure of the tax is income derived within the United States.

With reference to aliens, therefore, it must be determined whether they are resident in which case they must pay the tax on their whole income; or if not resident whether they own property or carry on a business, trade or profession in the United States.

In the latter case, they are taxable only with reference to income earned or paid in this country. If they are non-resident and do not derive an income from any source within our territory of course they are not taxable at all.

In the first place, then, who is a resident?

§ 20. Meaning of phrase "residing in the United States." It has been said in England: "There is not much difficulty in defining the residence of an individual; it is where he sleeps and lives. * * * 'Reside' does not mean an artificial residence. It means an actual residence. * * * Registration, like the birth of an individual, is a fact which must be taken into consideration in determining the question of residence. It may be a strong circumstance, but it is only a circumstance." [1] The question is often very difficult of solution. A learned Scotch judge said that "a man cannot have two domiciles at the same time, but he certainly can have two residences," [2] a rule that seems to be well recognized in Great Britain. According to Chief Baron POLLOCK, "The word 'reside' does not necessarily mean dwell." [3] According to Baron MARTIN,

§ 20. [1] *Calcutta Jute Mills* v. *Nicholson*, L. R. 1 Exch. Div. 428, 45 L. J. Exch. N. S. 821, 35 L. T. N. S. 275, 25 Week. Rep. 71, 1 Tax Cas. 83 (1876).

[2] Lord INGLIS in *Lloyd* v. *Inland Revenue*, 21 Scot. L. R. 484.

[3] *Attorney-General* v. *McLean*, 1 Hurlst. & C. 750, 761.

"There was strong ground for contending that one who spends the day at his shop attending to his business, and may there be seen and conversed with on matters of business, and does not choose to be communicated with elsewhere, is 'residing' there." [4]

It has been held that the British Government may collect a tax on the income of a man domiciled and carrying on business abroad, when he owns an estate in England and lives there five months of the year.[5] And, *e contra,* it was held that under a statute exempting persons "actually in Great Britain for some temporary purpose only, and not with any view or intent of establishing his or her residence therein, and who shall not have actually resided in Great Britain for the period of six successive calendar months," one who bought a house in London, furnished it, left a woman in charge of it during his absence, and took his retinue to and from it, was taxable as a resident of Great Britain and not within the exemption, although he occupied the house only ten weeks in the year and spent the rest of his time at his estate in Ireland, which is not a part of "Great Britain." [6] So an American citizen who practised law in New York, but held a shooting in Scotland for a term of years and spent two months there annually, was held to reside in Great Britain for the purpose of the income tax.[7] An American citizen was held to be a resident of the United Kingdom when, for twenty years, he had lived on board his own yacht, anchored near the shore, in tidal navigable waters, within a British port, obtaining provisions and necessaries from the nearest village, although the yacht had always been kept fully manned and ready to go to sea at any moment.[8] The mere fact of presence in, or absence from, the place claimed to be the residence would seem not to be a controlling element. Thus it was held that a sailing master who was absent from his

[4] *Ibid*, p. 761.

[5] *Lloyd* v. *Inland Revenue*, 25 Scot. L. R. 782.

[6] *Attorney-General* v. *Coote*, 4 Price, 183.

[7] *Inland Revenue* v. *Cadwalader*, 42 Scot. L. R. 117, 7 F. 146, 5 Tax Cas. 101, 1904.

[8] *Brown* v. *Burt*, 105 L. T. N. S. 420, 81 L. J. K. B. N. S. 17, 5 Tax Cas. 667, 1911.

home for all but eighty-eight days in the year was yet a resident of the place where he hired a house and his family lived,[9] and similarly when he was absent the whole year.[10] But a British merchant was held not to be assessable as a resident of the United Kingdom, although his wife and children had lived there for a number of years, occupying latterly a house bought in the wife's name with the money of both husband and wife, and the husband lived with them when in Great Britain, but he carried on business at Madras, India, usually resided there, and during the year of assessment was never in the United Kingdom.[11]

§ 21. Meaning of phrase "income from property owned in the United States." Non-resident aliens must pay a tax upon the net income of all property owned in the United States.[1] When the property is tangible, the liability to the tax is easy of ascertainment. When the property is a chose in action, the question is more difficult of solution.[2] Is interest due to a non-resident alien upon the obligation of a resident of the United States, whether the debtor is a citizen, an alien or a domestic corporation, subject to the tax? And is there any difference in this respect between debts evidenced by specialties, that is, bonds or other instruments under seal, and debts due upon promissory notes or other written, but unsealed, promises to pay? And is there a difference in this respect between debts not evidenced in writing and promises that are merely oral? Does the location of the instrument within the United States make any difference in this respect?[3]

9 *Young* v. *Inland Revenue*, 12 Scot. L. R. 602.

10 *Rogers* v. *Inland Revenue*, 16 Scot. L. R. 682.

11 *Turnbull* v. *Inland Revenue*, 42 Scot. L. R. 15, 7 F. 1, 1904.

§ 21. 1 Subsection A, subd. 1.

2 By the Income Tax Act of 1895, of the Colony of Victoria a tax is imposed on all income derived by any person from the produce of property within Victoria. An insurance company which did no insurance business in Victoria, but loaned money there on the security of land, was held to be taxable on the income therefrom. *England* v. *Webb*, 67 L. J. P. C. N. S. 1200 [1898] A. C. 758. *Cf. Scottish Provident Institution* v. *Allen*, 72 L. J. P. C. N. S. 70, [1903] A. C. 129.

3 As to this last point, see *Scotch Widows' Fund Life Assurance Society* v. *Farmer* [1909] S. C. 1372, 46 Scot. L. R. 993, 5 Tax Cas. 502;

If the legislative history of the statute is to be considered it would seem that it was not intended to tax interest upon any of such obligations, unless received in connection with a business carried on within the United States. And the Treasury regulations take this position.

§ 22. **Meaning of the phrase "income from every business, trade or profession carried on in the United States by persons residing elsewhere."** It was said by a British judge: "I agree with the opinion expressed by the late Lord Chief Justice COCKBURN in Sulley v. Attorney-General, 5 H. N. 711, that it is probably a question of fact where the trade is carried on. * * * If it is a question of fact in each case, it will be impossible to make an exhaustive definition of what constitutes carrying on a trade." [1] There are some reported decisions in Great Britain which in default of decisions in this country under the old law may be of service. In the case of mercantile trades the distinction is taken between buying and selling. To buy in a country is not necessarily to do business there. Thus a member of a New York firm, residing in England, was held not taxable with respect to the firm profits made by the firm in the exportation of goods from England, on the ground that the firm was only a customer in England and did not carry on a trade there.[2] On the other hand it is well settled in England that to keep an agent for the sale of goods in a foreign country is to transact business in that country.[3] This has been held to be the case, although the agent takes the lease in his own name, transacts no other business, pays the rent and clerk hire and sells the foreign country upon a *del credere* commission guaranteeing the collections.[4]

Scotch Provident Institution v. *Farmer* [1912] S. C. 452, 49 Scot. L. R. 435, 6 Tax Cas. 34.

§ 22. [1] Lord Esher, M. R., in *Werle* v. *Colquhon*, L. R. 20 Q. B. Div. 753. As to what constitutes doing business within the state by a foreign corporation generally, see note in 24 L.R.A. 295.

[2] *Sulley* v. *Attorney-General*, 5 Hurlst. & N. 711 (1860); reversing *Attorney-General* v. *Sulley*, 4 Hurlst. & N. 769 (1859).

[3] *Pommery* v. *Apthorpe*, 56 L. J. Q. B. N. S. 155; and see *Tischler* v. *Apthorpe*, 52 L. T. N. S. 814, and *Werle* v. *Colquhon*, L. R. 20 Q. B. Div. 753. For note on establishing agency to handle a corporation's products within the state as doing business therein. See 18 L.R.A. (N.S.) 142.

[4] *Tischler* v. *Apthorpe*, Q. B. D. 1885; 52 L. T. N. S. 814; *MacPherson & Co.* v. *Moore* [1912] S. C. 1315, 49 Scot. L. R. 979, 6 Tax Cas. 107.

It is a significant circumstance to prove the carrying on of business that the taxpayer's name is in the city directory,[5] or on the door of an agent's premises,[6] or that he has an office for his private use with his agent.[7]

There is a statute of frequent occurrence in substantially the same phraseology in the various States of the Union requiring foreign corporations to file certificates as to certain facts of their incorporation, place of business, and the like, "before they shall be allowed to do business within the state." Under such a statute isolated single transactions do not constitute doing business in the state where the transaction occurred.[8] Neither is it transacting business in a State to lease telephones to a licensee who is to sublet them, even if the licensor have the privilege of collecting the rent from the sub-lessees if necessary.[9] But the maintenance of an agent within a State to solicit contracts, constitutes "doing business" there.[10]

§ 23. Incidence of the tax with respect to corporations, joint-stock companies and associations. The tax is imposed upon the entire net income arising or accruing from all sources to every corporation, joint-stock company or association, and every insurance company, with certain exceptions, "organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year." [1] Whether the phrase "organized in the United States" includes corporations organized in the District of Columbia, Hawaii,

[5] *Werle* v. *Colquhon*, L. R. 20 Q. B. Div. 753.

[6] *Werle* v. *Colquhon*, L. R. 20 Q. B. Div. 753; *Tischler* v. *Apthorpe*, 52 L. T. N. S. 814.

[7] *Tischler* v. *Apthorpe*, 52 L. T. N. S. 814.

[8] *D. S. Morgan & Co.* v. *White*, 101 Ind. 413; *Cooper Manufacturing Co.* v. *Ferguson*, 113 U. S. 727, 28 L. ed. 1137, 5 Sup. Ct. Rep. 739. See Foster's Fed. Pr. 5th ed. §§ 88, 164. For note on single or isolated transaction by foreign corporation as doing business within the state, see 10 L.R.A.(N.S.) 693.

[9] *U. S.* v. *Am. Bell Telephone Co.* 29 Fed. 17; *People* v. *American Bell Telephone Co.* 117 N. Y. 241, 22 N. E. 1057; *Commonwealth* v. *American Bell Telephone Co.* 129 Pa. 217, 18 Atl. 122.

[10] *International Text Book Co.* v. *Pigg*, 217 U. S. 91, 104, 54 L. ed. 678, 684, 27 L.R.A.(N.S.) 493, 30 Sup. Ct. Rep. 481, 18 Ann. Cas. 1103 (a correspondence school).

§ 23. [1] Act of Oct. 3, 1913, Subsection G (a).

Porto Rico, the Philippine Islands and Alaska, is not expressly stated.[2]

§ 24. **Incidence of the tax upon foreign corporations, joint-stock companies and associations.** A corporation, joint-stock company or association, organized, authorized or existing under the laws of a foreign country, is taxed only upon the amount of net income accruing from business transacted and capital invested within the United States.[1] In determining the meaning of the phrase "business transacted," the cases where individual taxpayers were concerned are applicable.[2]

Where a foreign mining company, with its head office and mines in a foreign country, employed agents to sell its products in Great Britain, with authority in the agents to fix the prices at any sum above a minimum fixed by the company, the agents being paid by commission, and the appointment of sub-agents by them to be subject to the company's approval, deliveries to be made in a foreign country under contracts for payment "by cash in London," but all payments in fact being made by crossed checks, payable in some cases to the company and in others to the agents, and in every case forwarded with any requisite endorsements by the agents to the company at its home office, where they were deposited; it was held that the company did not exercise a trade in the United Kingdom and that these profits were not subject to the income tax.[3] It has been held that entries of receipts in the course of bookkeeping, when cancelled by entries on opposite columns, are not sufficient to establish that the money was actually received at the place stated in the books;[4] but that when a payment due from a branch in one country to another corporation under lease executed by it in another State from the former, and then charged off by an entry of the payment of a sum due by the latter to the former upon another account, thus saving the expenses of cross remittances, there is a constructive remittance, and, in Great Britain, it has been taxed as income received by the former from the latter.[5]

Where a foreign marine cable company had cables terminat-

[2] But see *ibid.* Subsection G.

§ 24. [1] Subsection G (a).

[2] *Supra*, § 22.

[3] *Crookston Brothers* v. *Furtado* (1911) Scotch Cases 217; 43 Scotch L. R. 134; 5 Tax Cas. 602.

[4] *Standard Life Assurance Co.* v. *Allen* (1901) 3 F. 805; 38 Scotch L. R. 628; 4 Tax Cas. 446.

[5] *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886) 14 Reports 98; 24 Scotch L. R. 87; 2 Tax Cas. 165.

ing in Great Britain and offices there where it received messages for transmission to other countries, it was held that the receipts from messages received in that country were subject to the British income tax, although its main office was in a foreign country and it made no profits from telegraphing over the British land.[6] It has been held that a telephone company is not "doing business in" a State where telephones are used by another corporation under lease executed by it in another State upon a rental of a percentage of the royalties received by the lessees for the use of the telephones, although the lease authorizes the lessor, in case of default by the lessee, to collect these royalties in the name of the latter.[7]

The question as to what constitutes "doing business in the United States," had also been discussed with reference to non-resident aliens.[8]

§ 25. Exempt corporations. The statute exempts certain corporations from the income tax as follows:

"That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for

[6] *Erichsen* v. *Last*, L. R. 8 Q. B. D. 414.

[7] *People* v. *American Bell Telephone Co.* 117 N. Y. 241, 22 N. E. 1057; *Commonwealth* v. *American Bell Telephone Co.* 129 Pa. 217, 18 Atl. 122. See also *U. S.* v. *American Bell Telephone Co.* 29 Fed. 17, per Mr. Justice Jackson. It was held that an insurance company was not carrying on a trade in a colony where it invested in mortgages but did not insure. "Their trade is not to invest but to insure." *Scottish Prov. Institution* v. *Allen*, 72 L. J. P. C. 70, [1903] A. C. 129. See Foster's Fed. Pr. 5th ed. §§ 88, 164.

[8] *Supra*, § 24.

profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract." [1]

The statute was carefully drawn to avoid any possible interference with the revenues of States and their municipalities. In sub-section B it allows a deduction from net income of individuals of all "State, County, School and Municipal taxes paid within the year, not including those assessed against local benefits." In Subsection G it provides that in the ascertainment of the net income of a corporation, joint-stock company, or association, or insurance company, whether domestic or foreign there shall be deducted all sums paid by it within the year for taxes imposed under the state or authority of any State of the United States. And in sub-section B it further provides that in computing net income there shall be included the compensa-

§ 25. [1] Subsection G (a).

tion of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the government of the United States. These provisions illustrate the anxiety of the framers of the act to avoid constitutional questions. Even if they had been omitted, however, the last exemptions at least would have obtained on constitutional grounds.[2] Within the principle of these cases it would be doubtful whether the Federal Government could even indirectly reduce the income of the State or municipal corporation, as, for example, by a tax on the dividends of a corporation in which such a State corporation should hold shares.

The statute exempts counties and municipalities in the Territories including Porto Rico and the Philippines as well as in the States. Towns, parishes, hundreds and all other local subdivisions will be held to be included in the exemption.

There is in England a numerous class of *quasi*-public corporations of which in this country we have only a few examples, such, for instance, as the corporations known as the Trustees of the New York and Brooklyn Bridge. These corporations are institutions for the management of public works, such as docks on the seaboard, in which the community as such has a more or less definite interest. The English theory of such bodies seems to be that, although they may have revenues, they are not taxable with respect thereto unless the revenues are derived otherwise than from tolls levied for the use of their property by the members of the community they were created to serve. Revenues derived by way of tolls upon citizens are not regarded as profits.[3] It is immaterial, however, if profits are earned by such a corporation, that they are devoted to the payment of its funded debt in order that the tolls upon citizens are to be reduced. A profit is a profit irrespective of the mode of its application.[4]

[2] *Collector* v. *Day*, 11 Wall. 113, 20 L. ed. 122; *Freedman* v. *Sigel*, 5 Chicago Leg. News, 196, Fed. Cas. No. 5,080; *U. S.* v. *Ritchie*, 4 Chicago Leg. News, 139, Fed. Cas. No. 16,168; *U. S.* v. *Railroad Co.* 17 Wall. 322, 21 L. ed. 597; and see also various opinions of Attorneys-General, 12 Ops. Atty.-Gen. 277; *Ibid.* 376; *Ibid.* 439; 13 Ops Atty-Gen. 67. But see *Manhattan Co.* v. *Blake*, 148 U. S. 412. 37 L. ed. 504, 13 Sup. Ct. Rep. 640, where it was held that a tax on the average amounts of deposits in a bank is collectible. Although part of the deposits were State funds the tax was on the bank and not on the State and did not diminish the State revenues. See *supra*, § 16.

[3] *Glasgow, etc. Commissioners* v. *Inland Revenue*, 2 Ct. Sess. Cas. 708; *Attorney-General* v. *Black*, L. R. 6 Exch. 308.

[4] *Mersey Docks, etc. Board* v. *Lucas*, L. R. 8 App. Cas. 891; *Lowrey*

It has been said by the Supreme Court of the United States speaking through Mr. Justice DAY:

"It is no part of the essential governmental functions of a State to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of private corporations and though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred." [5]

The act of 1913, however, expressly exempts any income derived from any public utility as well as from the exercise of any essential governmental function accruing to any State, Territory, including the Philippines and Porto Rico or the District of Columbia, or to any municipality or other subdivision of the same.[6] The prior exemption of income from a contract between such a public corporation and any person or corporation for the construction and operation of a public utility, was inserted for the benefit of the City of New York which had made such a contract for the construction of subways.

The provision for the exemption of corporations organized for charitable, religious or educational purposes and of mutual benefit societies, labor organizations, cemetery companies and building and loan associations were not contained in the statutes prior to 1894, and there are no decisions in the courts of the United States directly bearing upon the subject except as regards the constitutionality of such exemptions. In the case which decided that the Act of 1894 was unconstitutional, Mr. Justice FIELD expressed the opinion that the exemption of mutual savings banks and loan associations, was unjustifiable and invalid.[7] It has been subsequently held, however, that similar exemptions from the Corporation Income Tax of 1909 are valid.[8]

v. *Harbour Commissioners*, 3 Times L. R. 516.

[5] *Flint* v. *Stone Tracy Co.* 220 U. S. 108, 172, 55 L. ed. 389, 421, 31 Sup. Ct. Rep. 342.

[6] Subsection G (*a*).

[7] *Pollock* v. *Farmers' Loan & Trust Co.* 157 U. S. 429, 598, 599, 39 L. ed. 759, 825, 826, 15 Sup. Ct. Rep. 673.

[8] *Flint* v. *Stone Tracy Co.* 220 U. S. 107, 162, 55 L. ed. 389, 417, 31 Sup. Ct. Rep. 342.

Questions have been discussed in England which may be of value in ascertaining the construction of the Act of 1913.

The law of that country exempted the incomes of corporations established for "charitable purposes," and very learned arguments are to be found in the English reports with reference to the meaning of those words. The question was, whether "charitable purposes" was to be used in its popular signification of aid to the poor, or whether it was to receive the broader construction given to them in the common law, that is, whether "charitable purposes" was to be considered as meaning "charitable uses" as that phrase is used in the statute 43 Eliz., Ch. 4, and in the common law. The latter construction was finally adopted in the case which held that the income of a trust for the support of the children of Moravian ministers, certain single persons of the Moravian faith and Moravian missionary establishments was exempt as devoted to charitable purposes.[9]

The distinction may be a matter of moment under our own act. The statute 43 Eliz., Ch. 4, commonly known as the statute of charitable uses, reads (so much of it as is material) as follows:

"An act to redress the mis-employment of lands, goods, and stocks of money heretofore given to certain charitable uses.

"I. Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money have been heretofore given, limited, appointed, and assigned as well by the Queen's most excellent majesty, and her most noble progenitors, as by sundry other well-disposed persons; some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways, some for education and preferment of orphans, some for or towards relief, stock, or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed, and others for relief or redemption of prisoners or

9 *Commissioners* v. *Pemsel* [1891] *Pemsel* v. *Commissioners*, L. R. 22 A. C. 531, affirming *Queen ex rel.* Q. B. Div. 296 (1888).

captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes; which lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, moneys, and stocks of money, nevertheless have not been employed according to the charitable intent of the givers and founders thereof, by reason of frauds, breaches of trust, and negligence in those that should pay, deliver, and employ the same: for redress and remedy whereof, be it enacted by authority of this present parliament, That it shall and may be lawful to and for the lord chancellor or keeper of the great seal of *England* for the time being, and for the chancellor of the duchy of *Lancaster* for the time being for lands within the county palatine of *Lancaster,* from time to time to award commissions under the great seal of *England*, or the seal of the county palatine, as the case shall require, into all or any part or parts of this realm respectively, according to their several jurisdictions as aforesaid, to the bishop of every several diocese and his chancellor (in case there shall be any bishop of that diocese, at the time of awarding of the same commissions), and to other persons of good and sound behavior, authorizing them thereby, or any four or more of them, to enquire, as well by the oaths of twelve lawful men or more of the county, as by all other good and lawful ways and means, of all and singular such gifts, limitations, assignments, and appointments aforesaid, and of the abuses, breaches of trusts, negligences, misemployments, not employing, concealing, defrauding, misconverting, or misgovernment of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or stocks of money, heretofore given, limited, appointed or assigned or which hereafter shall be given, limited, appointed, or assigned, to or for any of the charitable and godly uses before rehearsed: and after the said commissioners, or any four or more of them (upon calling the parties interested in any such lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money), shall make inquiry by the oaths of twelve men or more of the said county (whereunto the said parties interested shall and may have, and take their lawful challenge and challenges), and upon such enquiry, hearing, and examining thereof, set down such orders, judgments, and decrees, as the said lands, tenements, rents, annuities, profits, goods, chattels, money, and

stocks of money, may be duly and faithfully employed, to and for such of the charitable uses and intents before rehearsed respectively, for which they were given, limited, assigned, or appointed by the donors and founders thereof: which orders, judgments, and decrees, not being contrary or repugnant to the orders, statutes, or decrees of the donors or founders, shall by the authority of this present parliament stand firm and good, according to the tenor and purport thereof, and shall be executed accordingly, until the same shall be undone or altered by the lord chancellor of *England* or lord keeper of the great seal of *England* of the chancellor of the county palatine of *Lancaster,* respectively, within their several jurisdictions upon complaint by any party grieved to be made to them.

"II. Provided always, That neither this act, nor anything therein contained, shall in any wise extend to any lands, tenements, rents, annuities, profits, goods, chattels, money, or stocks of money, given, limited, appointed, or assigned, or which shall be given, limited, appointed, or assigned to any college, hall, or house of learning within the universities of *Oxford* or *Cambridge* or to the colleges of *Westminster, Eaton* or *Winchester,* or any of them, or to any cathedral or collegiate church within this realm.

"III. And provided also, That neither this act, nor anything therein, shall extend to any city, to town corporate or to any the lands or tenements given to the uses aforesaid within any such city or town corporate, where there is a special governor or governors appointed to govern or direct such lands, tenements, or things disposed to any the uses aforesaid, neither to any college, hospital, or free school, which have special visitors or governors, or overseers appointed them by their founders."

It will be observed that the kinds of trusts listed in the preamble to the foregoing act are in many cases neither religious nor educational. In the case of Commissioners v. Pemsel,[10] the trust claiming the exemption was a trust for the benefit of Moravian missionaries, which under our own law would be clearly exempt under the word "religious." Many foundations might be thought of, however, whose work was neither to assist the poor, to educate, nor to instruct in religion, which would

[10] *Ibid.*

nevertheless be properly regarded as devoted to "charitable uses," and it may well be that they are exempt under subsection G.

It has been held in Scotland that the word charitable purposes applies to the relief of poverty and that a religious trust is therefore, not exempt as devoted to charitable purposes.[11] A burial board, organized under a general statute intended to protect the public health by securing proper burial in villages, was held not a charitable corporation. The board charged fees for all burials, and although they did not profit themselves, nevertheless the village did, because the fees were applied in reduction of parish rates. The element of gain to the ratepayers was present.[12] Under our statute cemetery companies are only exempt when "organized and operated exclusively for the mutual benefit of their members." [13]

In Great Britain the rule further seems to be that where a society or association organized for charitable purposes makes a profit by the transaction of business, those profits are income subject to the tax.[14] This rule has been applied to profits from the publication of hymn books, bibles and religious literature,[15] from a restaurant[16] and from a hospital; [17] even when the profits were used for charitable purposes.[18] The application of the profits to charitable purposes does not exempt the same from the income tax when the corporation or association is otherwise taxable.[19] On the other hand, merely incidental benefits would seem not to deprive such trusts of their exemption. Thus the House of Lords held that a society of engineers, the income of which was in fact devoted to the promotion of science should

11 *Baird Trustees* v. *Inland Revenue*, 25 Scot. L. R. 533 (1888) Sc. Ct. Sess.

12 *Paddington Burial Board* v. *Commissioners*, L. R. 13 Q. B. D. 9.

13 Act of Oct. 3, 1913, G (*a*).

14 *Religious Tract and Book Society of Scotland* v. *Forbes* (1896) 33 Scot. L. R. 289, 3 Tax Cas. 415.

15 *Trustees of Psalms and Hymns* v. *Whitwell* (1890) 7 Times L. R. 164, 3 Tax Cas. 7.

16 *Grove* v. *Young Men's Christian Association* (1903) 67 J. P. 279, 88 L. T. N. S. 696, 19 Times L. R. 491, 4 Tax Cas. 613.

17 *St. Andrews' Hospital (Northampton)* v. *Shearsmith* [1887] L. R. 19 Q. B. Div. 624, where the hospital was under state supervision and the services of the physicians were gratuitous, 57 L. T. N. S. 413, 35 Week. Rep. 811, 2 Tax Cas. 219.

18 *Ibid.*

19 *Ibid.* See *Attorney-General* v. *Black* (1871) L. R. 6 Exch. 308, 40 L. J. Exch. N. S. 194, 25 L. T. N. S. 207, 19 Week. Rep. 1114, 1 Tax Cas. 52.

not be taxed, under a statute exempting income "legally appropriated and applied * * * for the promotion of science," although it also appeared that the professional interest of its members was incidentally advanced. Such a holding would extend to the numerous scientific and professional societies of our own country.[20] It was held in England that a public library was not exempt as a literary or scientific institution;[21] but the income of a society of engineers was exempted as applied for the promotion of science.[22]

§ 26. **Incidence of the tax with respect to time.** The income tax upon individuals is "computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however,* That for the year ending December thirty-first nineteen hundred and thirteen said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for."[1] The income tax upon a corporation, joint-stock company, association, or insurance company, is "computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year: *Provided further,* That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated

[20] *Commissioners of Inland Revenue* v. *Forrest*, L. R. 15 App. Cas. 334 (1890).

[21] *Andrews* v. *Mayor, etc. of Bristol*, 61 L. J. Q. B. N. S. 715 (1892).

[22] *Commissioners of Inland Revenue* v. *Forrest*, L. R. 15 App. Cas. 334 (1890), H. L. affirming *Matter of Institution of Civil Engineers*, L. R. 20 Q. B. Div. 621 (1888), which reversed s. c. L. R. 19 Q. B. Div. 610 (1887).

§ 26. [1] Act of October 3, 1913, Subsection D.

in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed." [2] *"Provided further,* That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: And provided further, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint-stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint-stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: *Provided further,* That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint-stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act." [3] The reason of the exemption of income received during January and February, 1913, was because the Sixteenth Amendment authorizing the impo-

[2] *Ibid.* Subsection G (c). [3] *Ibid.* Subsection S.

sition of an income tax was not adopted before the latter part of February of that year.[4] The validity of the tax upon income received before the passage of the act is previously discussed.[5] When an individual dies within the year the tax must be paid on so much of his income as accrued within the year and before his death.[6] It has been held: That the same deductions are made from the income accruing before his death that would have been made if he had lived; but that[7] when corporations go into liquidation or consolidation during the year, they are liable for the income received during the months prior to such liquidation or consolidation as the case may be.[8]

[4] *Supra*, § 5.
[5] § 13, *supra*.
[6] *Mandell* v. *Pierce*, 3 Cliff. 134, Fed. Cas. No. 9,008 (1868).
[7] *Ibid.*
[8] T. D. Synopsis 1742.

CHAPTER IV.

INCOME SUBJECT TO TAX.

§ 27. Statutory definition of income of individuals subject to normal tax. Different rules regulate the ascertainment of the income subject to the tax when imposed upon individuals and when imposed upon corporations, joint-stock companies and associations. The income tax imposed upon individuals is of two kinds: the normal tax; [1] and the additional tax, which, in England, is called the super-tax.

The Act provides as to individuals:

"That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided,* That the proceeds of life insurance policies paid upon the death of a person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."

"That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest

§ 27. [1] Act of October 3, 1913, Subsection A, subd. 2.

paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided,* That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person."

"The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable."

"That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the

present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government." [2]

"That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided,* That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together." [3]

§ 28. **Income subject to additional tax.** "In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed" and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the pur-

[2] *Ibid.*

[3] *Ibid.* Subsection C.

pose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed." [1] This tax is not paid by a corporation, joint-stock company or association.

This subdivision is obscure in its failure to define the meaning of the phrase "net income," upon which the amount of the additional tax is based. The only point upon which it makes a distinct proviso is that the tax shall be based upon the "net income from all sources, corporate or otherwise" and the share to which the taxpayer would be entitled of the gains and profits, whether divided or distributed or not, of all corporations, joint-stock companies or associations, formed for the

§ 28. [1] Act of October 3, 1913. Subsection A, subd. 2.

purpose of permitting the gains and profits to accumulate, instead of being divided or distributed. It is clear that the additional tax is imposed upon the income derived from the dividends of corporations which have already paid the normal tax upon their own net income.

As regards the subject of deductions and exemptions, this subdivision merely refers to the provisions of the act relating to individuals chargeable with the normal income tax, so far as they are applicable and not inconsistent with this subdivision. The following subdivision, B, begins with the definition of net income.

"That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided,* That the proceeds of life insurance policies paid upon the death of a person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."

This undoubtedly applies. Then follows the statement beginning, "that in computing net income for the purpose of the *normal tax* there shall be allowed as deductions," followed by the deductions which have been previously quoted.[2] Are these deductions to be considered as incorporated by reference into subdivision A, so as to apply to the additional tax? If not, such tax will be estimated upon the gross income with the following exceptions.

The concluding paragraph of subdivision B provides: "That

[2] § 27, *supra.*

in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government." It seems clear that this exclusion should be made when the additional tax is assessed.

A question has been mooted concerning subdivision C, which provides "that there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him," &c.[3] It has been suggested that inasmuch as this paragraph is by its terms not confined to the normal income tax, persons subject to the additional income tax are entitled to two deductions of this $3,000; once when the normal tax is assessed and again upon the assessment of the additional tax, so that in fact the additional tax is not imposed unless the total net income exceeds $23,000, or in the case of marriage, when the parties live together, $24,000. This point has not yet been decided; but if the rulings of the Department are in accordance with the opinion of the deputy, Mr. Luther F. Speer, as expressed in his pamphlet, there will be no such deduction in the assessment of the additional tax.[4]

§ 29. Statutory definition of income of corporations, joint-stock companies and associations subject to tax. As to corporations, joint-stock companies and associations, the statute provides:

"Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of

[3] *Infra*, § 51.

[4] Speer's pamphlet, 25, 26. The suggestion was made to the author by Mr. R. G. Babbage of the New York bar.

its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided,* That in case of indebtedness

wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further,* that in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits, or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country: *Provided,* that in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) All losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* that mutual fire insurance companies requiring their members to make premium deposits to provide

for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided,* That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds." [1]

§ 29. [1] Act of October 3, 1913, Subsection G (b).

§ 30. **Judicial definitions of income.** It was said by Lord Chancellor HALSBURY of England: "I think it cannot be doubted, upon the language and the whole purport and meaning of the income tax acts, that it never was intended to tax capital * * * as income at all events." [1] Lord MACNAGHTEN: "In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on 'profits or gains' in the case of duties chargeable under Sched. (A.), and the expression 'profits or gains' is constantly applied without distinction to the subject of charge under all the Schedules." [2]

There are a few *dicta* in the State courts to the contrary. "Strictly speaking, 'income' means that which comes in or is received from any business or investment of capital without reference to the outgoing expenditures." [3] Accordingly, in a Georgia case "annual income" was construed as meaning "gross income." [4] So, "property may have an annual value 'without any income.'" [5] And the term "profits or income" has been construed as meaning "gross profits" or "gross income," and not "net profits" or "net income." [6] By the rule of construction, *noscitur a sociis,* however, the words in this statute must be construed in connection with those to which it is joined, namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profits of the taxpayer, not his whole revenue.[7] Accordingly, money received as the result of the change of an investment, or as the proceeds of a sale without profit, is not income. Thus, when a vendor received the purchase-money in annual installments, it was held in England that such installments were principal and not taxable as "annual payments" or income.[8] So, too, an increase of capital

§ 30. [1] Secretary of State, in *Council of India* v. *Scoble* [1903] A. C. 299, 302; 72 L. J. K. B. N. S. 617, 89 L. T. N. S. 1, 51 Week. Rep. 675, 4 Tax Cas. 618.

[2] *London County Council* v. *Atty. Gen.* [1901] A. C. 26, 70 L. J. K. B. N. S. 77, 83 L. T. N. S. 605, 49 Week. Rep. 686, 4 Tax Cas. 265.

[3] Judge Bronson in *People* v. *Supervisors*, 4 Hill. 20, 23.

[4] *Goldsmith* v. *Augusta, etc. R. R. Co.* 62 Ga. 468.

[5] Judge MILLER, in *Troy Iron & Nail Factory* v. *Corning,* 45 Barb. 231, 247.

[6] *People* v. *Supervisors,* 18 Wend. 605.

[7] But see Senate Debate August 26, 1913 Cong. Record Vol. 50, p. 4193.

[8] *Foley* v. *Fletcher,* 3 H. & N. 769.

when realized cannot justly be called profit or income. Examples are the increase in the value of real estate, or personal property, such as stocks, unless expressly provided in the statute. "Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital." [9]

§ 31. **Interest.** In estimating the taxable income, interest received by the taxpayer is included.[1] There are allowed as deductions also "all interest paid within the year by a taxable person on indebtedness." [2] It is unsettled whether interest paid as damages and not by express contract is subject to the tax.[3] But it has been held in England, that the interest included in the income includes interest for a less period of time than a year, paid by a purchaser who defaulted on the date of payment.[4] Where the Indian Government bought a railway and paid for the same, instead of a gross amount, a semi-annual sum for a term of years, with interest on the balance remaining unpaid; it was held: that these semi-annual payments represented partly an instalment of the purchase money and partly interest on the amount of the purchase money outstanding; that the former was capital and not income, and that the latter alone was subject to the tax.[5]

According to Deputy Commissioner Speer, interest accrued and due to the taxpayer, if good and collectable at the end of the year should be returned as income, whether actually collected or not." [6] Mr. Walker disputes this position saying that the former has overlooked the difference between the word "accrued" and the statutory term "derived." [7] Any Department regulations upon the subject will be discussed in the next chapter.

[9] Mr. Justice FIELD, in *Gray* v. *Darlington*, 15 Wall. 63, 21 L. ed. 45.

§ 31. [1] Act of October 3, 1913, Subsection B.

[2] *Ibid.*

[3] See *Gateshead Corporation* v. *Lumsden* (1913) 77 J. P. 124.

[4] *Bebb* v. *Bunney*, 3 Hen. & M. 213.

[5] *Secretary of State in Council of India* v. *Scoble* [1903] A. C. 299, 72 L. J. K. B. N. S. 617, 89 L. T. N. S. 1, 51 Week. Rep. 675, 4 Tax Cas. 618; *East India Railway* v. *Secretary of State for India* [1905] 2 K. B. 413, 74 L. J. K. B. N. S. 779, 93 L. T. N. S. 220, 54 Week. Rep. 4.

[6] Speer's Pamphlet.

[7] Walker's Pamphlet, p. 66.

§ 32. Rents. The act specifically provides that taxable income shall include rents.[1] Where land was leased for a term of years, the lessee covenanting to erect a building thereupon, the title to which, subject to the use of the lessee during the term, immediately vested in the lessor; it was ruled that the cost of erecting the building was in the nature of rent and should be returned as such by the lessor.[2] Produce paid as rent must be included.[3]

§ 33. Sales of real estate. The Act provides that "the net income of a taxable person shall include accounts, profits and income derived from * * * sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property." Sales may be of real or personal property. Personal property may consist of farm produce or other personal property. Sales of both real and personal property may be individual transactions or part of a business carried on by the taxpayer. Different rules regulate the liability to taxation of the profits derived in these different ways. The earlier statutes provided that the net profits of sales, realized by sales of real estate purchased within the year, should be chargeable as income.[1] By the Acts of 1870 and 1894, taxable income included "profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated."[2] The present statute is silent upon that point. According to the British rule, the profits made by a sale of real estate, are considered to be a change in the investment of capital and are not assessable as income,[3] unless the sale was part of a business or vocation in which the taxpayer was engaged.[4] Thus the sale of land by a fur company[5] and the sale of a plantation by a rubber com-

§ 32. [1] Act of October 3, 1913, Subsections A, B.

[2] 6 Int. Rev. Rec. 130.

[3] 5 Int. Rev. Rec. 154.

§ 33. [1] Act of June 30, 1864, § 116; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

[2] Act of July 14, 1870, § 7; Act of August 28, 1894, § 28.

[3] *Stevens* v. *Hudson's Bay Co.* (1909) 101 L. T. N. S. 96, 25 Times L. R. 709, 5 Tax. Cas. 424; *Tebrau Jehore Rubber Syndicate, Limited* v. *Farmer* [1910] S. C. 906, 47 Scot. L. R. 816, 5 Tax. Cas. 658. See *Assets Co.* v. *Forbes* (1897) 24 R. 578, 34 Scot. L. R. 486, 3 Tax. Cas. 542.

[4] *California Copper Syndicate* v. *Harrison* (1904) 6 F. 894, 41 Scot. L. R. 691, 5 Tax. Cas. 159. But see *Furtado* v. *Cardonald Feuing Co. Limited* [1907] S. C. 66, 34 Scot. L. R. 66.

[5] *Stevens* v. *Hudson's Bay Co.* (1909) 101 L. T. N. S. 96, 25 Times L. R. 709, 5 Tax. Cas. 424.

pany, were held not to be a part of their business and consequently the profits therefrom were not assessed as income. On the other hand, it was held that the profits upon the sale of a mine, received in the shares of the capital stock of the vendee, when made by a company formed to purchase and develop mining properties, was taxable as income.[6] It has been suggested by Mr. Black that the Act might be construed by reading the word "or" into the clause before the words "personal" and "growing," and that then by a slight transposition of some of the other terms it would lay a tax upon the "unearned increment of land," namely, an increase in its market value accruing within the year from any other cause than its improvement by the owner.[7] This suggestion does not commend itself to the present writer.[8]

§ 34. **Sales of personal property in general.** Profits derived from the sale of personal property are not ordinarily taxable as income unless the property was purchased and sold within the same year.[1] Where, however, such sales are part of a business carried on by the taxpayer, the profits must be included in the taxable income, although the property was purchased in a former year.[2] This was the ruling of a divided court in which the doctrine was thus stated by Mr. Justice Field, after quoting the language of the former statute:

" 'Gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying said tax.' This language has only one meaning, and that is that the assessment, collection, and payment prescribed are to be made up on the annual products or income of one's property or labor, or such gains or profits as may be realized from a business transaction begun and completed during the preceding year. There are exceptions, as already intimated, to the general rule of assessment thus prescribed. * * * Another exception is implied from the provision of the statute

[6] *California Copper Syndicate* v. *Harrison* (1904) 6 F. 894, 41 Scot. L. R. 691, 5 Tax. Cas. 159.

[7] Black, § 45.

[8] But see § 41, *infra*.

§ 34. [1] *Gray* v. *Darlington*, 15 Wall. 63, 65–67, 21 L. ed. 45, 46. But see *U. S.* v. *Smith*, 12 Int. Rev. Rec. 138, Fed. Cas. No. 16,341, and the rulings cited *infra*, § 35.

[2] *Gray* v. *Darlington*, 11 Wall. 63, 65–67, 21 L. ed. 45, 46. But see *U. S.* v. *Smith*, 12 Int. Rev. Rec. 138, Fed. Cas. No. 16,341, and the rulings cited *infra*, § 38.

which requires all gains, profits, and income derived from any source whatever, in addition to the sources enumerated, to be included in the estimation of the assessor. The estimation must, therefore, necessarily embrace gains and profits from trade and commerce, and these, for their successful prosecution, often require property to be held over a year. In the estimation of gains of any one year, the trader and merchant will, in consequence, often be compelled to include the amount received upon goods sold over their cost, which were purchased in a previous year. Indeed, in the estimation of gains and profits of a trading or commercial business for any one year, the result of many transactions have generally to be taken into account which originated previously. Except, however, in these and similar cases, and in cases of sales of real property, the statute only applies to such gains, profits, and income as are strictly acquisitions made during the year preceding that in which the assessment is levied and collected. The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital. The rule adopted by the officers of the revenue in the present case would justify them in treating as gains of one year the increase in the value of property extending through any number of years, through even the entire century. The actual advance in value of property over its cost may, in fact, reach its height years before its sale; the value of the property may, in truth, be less at the time of the sale than at any previous period in ten years, yet, if the amount received exceed the actual cost of the property, the excess is to be treated, according to their views, as gains of the owner for the year in which the sale takes place. We are satisfied that no such result was intended by the statute." [3]

§ 35. **Sales of farm products.** The Act of 1894 provides that in estimating the gains, profits and income of the taxpayer, shall be included "the amount of sales of live stock,

[3] *Gray* v. *Darlington*, 11 Wall. 63, 65–67, 21 L. ed. 45, 46. But see the rulings cited *infra*, § 38.

sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, or corn, or other vegetable, or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof not consumed directly by the family."[1] Former statutes had a similar provision without an express exemption of the amount expended in the purchase or production of said stock or produce.[2] Under these it was ruled: that the farmer in returning his income should enter all amounts received for animals sold and for the wool, hides and carcasses of animals that had died, provided the same were sold; that he might then deduct the sums actually paid for purchase money for animals sold within the year or which had died within the year; but that if the animals were raised on the farm, no deduction should be allowed.[3] That expenditures for labor in one year could not be deducted from the proceeds of the crop sold subsequently.[4] That the profit realized on a sale of standing or felled timber was taxable without reference to the time when the land was purchased.[5] That the profits thereupon should be assessed by estimating the value of the land after the timber was removed, adding thereto the net amount received for the timber and from this sum, deducting the estimated value of the land the previous year.[6] That rent for land bought for produce is income and that the expenses of carrying on premises so leased should be deducted from the income of the lessee only and could not be deducted the second time by the lessor.[7] The Act of 1913 has no provisions upon this subject; but the courts might adopt the rules in the former statutes.

§ 36. Dividends. The Act specifically directs that in determining the net income of a taxable person shall be included gains, profits and income derived from dividends.[1] The following clause, however, provides that in computing net income, for the purpose of the normal tax, there shall be allowed as de-

§ 35. [1] Act of August 28, 1894, § 28.

[2] Act of March 2, 1867, § 13; Act of July 14, 1870, § 7. See, also, Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

[3] 3 Int. Rev. Rec. 100.

[4] 4 Int. Rev. Rec. 12.

[5] 1 Int. Rev. Rec. 171.

[6] 2 Int. Rev. Rec. 61, amending 1 Int. Rev. Rec. 171.

[7] 5 Int. Rev. Rec. 154.

§ 36. [1] Act of Oct. 3, 1913, subsection B.

ductions: "Seventh. The amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided." [2] It was said by Mr. Victor MORAWETZ, that the holders of preferred stock of corporations thus escape the burden of the normal income tax, which falls solely upon the holders of common stock and the bondholders.[3] But the Treasury Department might contend that their dividends are taxed at their source as income derived from the obligation of a corporation.[4] That distinguished corporation lawyer said further concerning the bill as originally introduced: "Moreover, apparently the portion of large incomes derived from dividends on preferred and common stocks would not be subject to any additional tax, though in excess of $20,000. Thus if an individual's gains in business should earn a net profit of $100,000, he would have to pay the normal tax on $96,000, and also the additional taxes on the portion of his income in excess of $20,000; but, apparently, if the same individual should vest his business in a corporation and hold the stock of the latter, the corporation would have to pay the normal tax on the $100,000, while the stockholder would not have to pay any additional tax." [5] But the law as finally enacted provides: "Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury." [6] The person liable to the additional tax must consequently pay the same upon his share of the income of a corporation, although such corporation has already paid the normal tax upon the same at its source. Dividends received from a foreign corporation, or from any other corporation which is not taxable upon its net income, are subject to the normal tax.[7] Under the

[2] *Ibid.*

[3] New York Sun. May 8, 1913.

[4] Act of Oct. 3. 1913, subsection E. See § 71, *infra.*

[5] New York Sun, May 8, 1913.

[6] Act of Oct. 3, 1913. Subsection A, subd. 2.

[7] *Bailey* v. *Railroad Co.* 106 U. S. 109, 27 L. ed. 81, 1 Sup. Ct. Rep. 62; distinguishing s. c. 22 Wall. 604, 22 L. ed. 840. See *Merchants' Insurance Co.* v. *McCartney*, 1 Low. Dec. 447, Fed. Cas. No. 9,443.

former statutes it was held, that stock dividends, which represented earnings of a corporation during previous years, were not taxable as dividends.[8] Whether dividends payable to foreign stockholders are taxed is not specifically stated. If the legislative history of the bill is to be conclusive, it would seem to be the intention of Congress not to tax the same.

Mutual life insurance, fire insurance and marine insurance companies, and also many insurance companies that are not mutual in their nature, are accustomed to return or credit to their policyholders every year sums which are termed in insurance nomenclature "dividends." So far as these consist of a return to the policyholder of the loading or excessive premium charge, made to meet contingencies, in the case of life insurance companies and mutual fire and marine insurance companies, they are by the statute expressly deducted from the income of the corporation liable to taxation,[9] and probably they are not taxable as part of the income of the stockholders, although they may properly be deducted from any credit he may claim for payments on account of insurance. Actual profits paid to participating policyholders might, however, be held to be taxable as part of their income, when no tax upon the source was paid.[10]

§ 37. Income from professions and vocations. The statute further taxes income from professions, and vocations.[1]

It may be contended that an attorney is an officer of a State [2] and that his compensation is consequently exempt.[3] In England, the profits of a professional bookmaker on the races were held taxable as income from a vocation.[4]

In Great Britain the rental value of an apartment, in a

[8] But see *Railroad Co.* v. *Collector*, 100 U. S. 595, 25 L. ed. 647; *U. S.* v. *Erie Ry. Co.* 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223.

[9] Act of Oct. 3, 1913, subsection G (*b*).

[10] See *Last* v. *London Assurance Corporation* (1885) L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Weekly Rep. 233, 2 Tax Cas. 100.

§ 37. [1] Subsection B.

[2] See *Ex parte Garland*, 4 Wall. 333, 378, 18 L. ed. 366, 370; *Re Wall*, 13 Fed. 814, 27 Alb. L. J. 91; *Ex parte Law*, Fed. Cas. No. 8,126, 35 Ga. 285, 6 Am. L. Reg. N. S. 410, note; *Matter of Dorsey*, 7 Port. (Ala.) 293; *Cohen* v. *Wright*, 22 Cal. 293; *Heffren* v. *Jayne*, 39 Ind. 463, 13 Am. Rep. 281; *Matter of Burchard*, 27 Hun, 429; *Matter of Baum*, 8 N. Y. Supp. 771, 30 N. Y. S. R. 174; *Baur* v. *Betz*, 7 N. Y. Civ. Proc. 233, 1 How. Pr. N. S. 344 (*affirmed* in 99 N. Y. 672); *Ingersoll* v. *Howard*, 1 Heisk. 247; *Leigh's Case*, 1 Munf. 468.

[3] See 11 Va. Law Reg. 8.

[4] *Partridge* v. *Mallandaine*, L. R. 18 Q. B. D. 276.

bank building given to the officer of a bank, was held not to be taxable as income.[5]

Profits credited to an employee upon the books of his employer are taxable as income if he has an absolute right to receive them in the future, even it has been held, when that depends upon the performance [6] by him of certain conditions; [7] but not, when he has no right to receive them until the latter's capital has been repaid him.[8] The customary Christmas presents to clerks are considered as income from their vocation and taxable as income.[9] Easter offerings [10] and other voluntary contributions [11] by parishioners to their clergymen, and payments by a Clergy Sustentation Fund [12] and a Stipend Augmentation Fund [13] created for the purpose of increasing the annual compensation of clergymen were held to be taxable as income; but not grants by a Curates' Augmentation Fund in recognition of faithful service for a period of time,[14] nor Sunday collections paid to the incumbent because he was poor.[15] According to Mr. SPEER: "Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if the same are considered good and collectible. Should any such accounts prove to be bad or uncollectible, the amount of same are deductible from income for the year in which they are ascertained to be losses and are so treated and acknowledged by the taxable person."

[5] *Tennant* v. *Smith* [1892] A. C. 150, 61 J. L. P. C. N. S. 11, 66 L. T. N. S. 327, 3 Tax Cas. 158. Also see *McDougal* v. *Sutherland* (1894) 21 R. 753, 31 Scot. L. R. 630, 3 Tax Cas. 261; and *Corke* v. *Fry* (1895) 22 R. 422, 32 Scot. L. R. 341, 3 Tax Cas. 335, set out under § 163, *post*.

[6] *Smyth* v. *Stretton* (1904) W. N. 90, 90 L. T. N. S. 756, 53 Week. Rep. 288, 5 Tax Cas. 36.

[7] *Ibid.*

[8] *Walker* v. *Reith* (1906) 8 F. 381, 43 Scot. L. R. 245.

[9] 7 Int. Rev. Rec. 35.

[10] *Blakiston* v. *Cooper* [1909] A. C. 104, 78 L. J. K. B. N. S. 135, 100 L. T. N. S. 51, Tax Cas. 347.

[11] *Inland Revenue v. Strang* (1878) 15 Scot. L. R. 704, 1 Tax Cas. 207. But see *Turner* v. *Cuxon*, L. R. 22 Q. B. Div. 150.

[12] *Herbert* v. *McQuade* [1902] 2 K. B. 631, 71 L. J. K. B. N. S. 884, 87 L. T. N. S. 349, 4 Tax Cas. 489.

[13] *Poynting* v. *Faulkner* (1905) 93 L. T. N. S. 367, 21 T. L. R. 560, 5 Tax Cas. 145.

[14] *Turner* v. *Cuxson* (1888) L. R. 22 Q. B. Div. 151, 58 L. J. Q. B. N. S. 131, 60 L. T. N. S. 332, 37 Week. Rep. 254, 2 Tax Cas. 422.

[15] *Turton* v. *Cooper* (1905) 92 L T. N. S. 863, 5 Tax Cas. 138.

Mr. Walker disputes and seems to refute this position. Any regulations of the Treasury Department upon this subject will be discussed in the chapter on Returns and Assessments.

§ 38. **Incomes derived from wages or compensation.** The Act specifically taxes incomes derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions and vocations, when in excess of $3,000 a year.[1] The salaries of the present President of the United States during the term for which he has been elected, of the Judges of the Supreme and inferior courts of the United States in office at the time of the passage of the Act, and the compensation of all officers and employees of a State or any political subdivision thereof, are exempted; except, in the last case, when such compensation is paid by the United States Government.[2] Where the salary of a Federal officer exceeds $3,000 or $4,000 annually, in case the taxpayer is married and lives with the husband or wife, as the case may be, the paymaster or other disbursing officer takes the amount of tax from the amount of salary.[3] When the salary is paid by a private employer, he does the same.[4] It has been held that travel pay or mileage and commutation for the subsistence of naval or military officers of the United States, to the extent of the surplus, if any, over actual expenditures therewith connected, must be treated for the purposes of the tax as additions to their salaries.[5] When a tax has been illegally deducted from the salary of a Federal officer, he can recover it from the United States by a suit in the Court of Claims.[6]

It has been held in Great Britain that sums annually placed to the credit of a school teacher, which were payable to him upon his retirement or resignation, under certain conditions, were in true effect additions to his salary upon which the tax must be paid,[7] but that sums credited to an employee's account, which could not be withdrawn until the whole amount of the

§ 38. [1] Act of October 3, 1913, Subsection B.

[2] *Ibid.*

[3] *Ibid.* Subsections C, E.

[4] *Ibid.*

[5] Attorney General Olney, 21 Op. A. G. p. 112.

[6] Jud. Code, 36 Stat. at L. 1087, § 145; *U. S.* v. *McDermott*, 140 U. S. 157; Foster's Fed. Pr. 5th ed. § 671.

[7] *Smyth* v. *Stretton*, W. N. 90, 90 L. T. N. S. 756, 53 Week. Rep. 288, 5 Tax Cas. 36.

master's capital had been repaid, were not;[8] that annual grants made to a clergyman out of a Clergy's Sustenation Fund or Stipend Augmentation Fund, destined to raise the income of benefices up to a specified yearly amount, for the purpose of increasing his compensation,[9] and voluntary Easter offerings given by parishioners to the vicar in response to a request by the bishop asking churchmen to mitigate the hardships of the underpaid clergy generally, were profits and gains of the profession of the clergymen;[10] but that parts of the Sunday collections paid to the incumbent, which would not have been made unless he had been poor,[11] and a grant to a curate in recognition of faithful service for more than fifteen years,[12] and an annuity payable to an infirm minister who had retired, were not.[13] The customary Christmas presents to clerks are considered as compensation for services rendered and taxable as income.[14]

§ 39. Salaries. Salaries when in excess of $3,000 are expressly taxed as income,[1] unless the payee thereof is married and lives with wife or husband, as the case may be. In such case the salary in excess of $4,000 only is taxed; but if husband and wife both live together, only one deduction on $4,000 is made from the aggregate income.[2] This applies to officers and employees of the United States, as well as those employed by private individuals.[3] The tax is paid by the employer,[4] unless the compensation is not fixed or certain, or is indefinite or irregular as to amount or time of accrual. In the latter case it is paid by the individual.[5]

The statute exempts from the tax "the compensation of the present President of the United States during the term for

[8] *Walker* v. *Reith*, 8 F. 381, 43 Scot. L. R. 245 (1906).

[9] *Herbert* v. *McQuade* [1902] 8 K. B. 631, 71 L. J. K. B. N. S. 884, 87 L. T. N. S. 349, 4 Tax Cas. 489; *Poynting* v. *Faulkner* (1905) 93 L. T. N. S. 367, 21 Times L. R. 560, 5 Tax Cas. 145.

[10] *Blakiston* v. *Cooper*, A. C. 104, 78 L. J. K. B. N. S. 135, 100 L. T. N. S. 51, 5 Tax Cas. 347. See *Inland Revenue* v. *Strang*, 15 Scot. L. R. 704, 1 Tax Cas. 207 (1878).

[11] *Turton* v. *Cooper*, 92 L. T. N. S. 863, 5 Tax Cas. 138.

[12] *Turner* v. *Cuxson*, L. R. 22 Q. B. Div. 150, 58 L. J. Q. B. N. S. 151, 60 L. T. N. S. 332, 37 Week. Rep. 254, 2 Tax Cas. 422.

[13] *Duncan's Trustees* v. *Farmer* [1909] S. C. 1212, 46 Scot. L. R. 857, 5 Tax Cas. 417.

[14] Ruling, 1 Int. Rev. Rec. 150; Ruling, 7 Int. Rev. Rec. 35.

§ 39. [1] Act of October 3, 1913, Subsections B. C.

[2] *Ibid.* Subsection C.

[3] *Ibid.* Subsection D.

[4] *Ibid.* Subsection E.

[5] *Ibid.* Subsection B, D.

which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government." [6] This exemption so far as it applies to the present President and United States judges would probably be made by the courts under the Constitution, even if not contained in the statute.[7] Whether the salaries of State officers and of political subdivisions of States, such as municipalities, are taxable under the Sixteenth Amendment, is an undecided question.[8] Whether the exemption extends to the judges of the courts of the Territories and District of Columbia, such as the District Court of Alaska, the District Court of the United States for Porto Rico, the District Court of Hawaii, the Supreme Court of the Philippines, the United States Court for China, the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia; may be doubted. These are not usually considered to be courts of the United States.[9] The same doubt exists concerning the salaries of members of the Board of General Appraisers and the fees of United States Commissioners.

§ 40. Property acquired by gift, inheritance, or life insurance. The tax is imposed upon "the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided,* That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income." [1]

[6] *Ibid.* Subsection B.

[7] See § 12, *supra.*

[8] See § 11, *supra.*

[9] *American Insurance Co.* v. *Canter,* 1 Pet. 516, 7 L. ed. 243; *Benner* v. *Porter,* 9 How. 235, 13 L. ed. 119; *Clinton* v. *Englebrecht,* 13 Wall. 434, 20 L. ed. 659; *McAllister* v. *U. S.* 141 U. S. 174, 35 L. ed. 693, 11 Sup. Ct. Rep. 949; *James* v. *U. S.* 202 U. S. 401, 50 L. ed. 1079, 26 Sup. Ct. Rep. 685; *Romeu* v. *Todd,* 206 U. S. 358, 368, 51 L. ed. 1093, 1097, 27 Sup. Ct. Rep. 724; (United States Court for Porto Rico). But it has been *held* that the Supreme Court of the District of Columbia is a court of the United States within the meaning of U. S. Rev. Stat. § 714, U. S. Comp. Stat. 1901, p. 578. See Foster's Fed. Pr. 5th ed. § 2.

§ 40. [1] Act of October 3, 1913, Subsection B.

In Great Britain, payments to clergymen out of Sunday collections, made because they are poor,[2] and grants by a Curates' Augmentation Fund in recognition of faithful service, are considered to be gifts and not income;[3] but voluntary contributions by parishioners,[4] including voluntary but customary Easter offerings,[5] are taxed as income from a profession.[6] The customary Christmas presents to clerks are considered as compensation for services rendered and taxable as income.[7]

§ 41. Miscellaneous income. The statute, after enumerating special kinds of taxable income, then taxes all gains, profits and income derived from any source whatever, including the income from, but not the value of, property acquired by gifts, bequest, devise or descent: *"Provided,* That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."[1]

Besides the incomes specifically enumerated above, all other kinds of annual profits are taxable. The profits, on the sale of a patent right, or fraction thereof, are taxable as income; and are to be estimated by subtracting from the amount received the sums actually expended, in purchasing the right, obtaining the patent and perfecting the invention, or a ratable proportion of the same, but no allowance can be made for the time, labor, or personal expenses of the inventor.[2]

In an inferior court, it was held that gains derived from speculation in stocks are to be considered as gains in business, without reference to the time of the purchase thereof.[3] Inter-

[2] *Turton* v. *Cooper* (1905) 92 L. T. N. S. 863, 5 Tax Cas. 138.

[3] *Turner* v. *Cuxson* (1888) L. R. 22 Q. B. Div. 150, 58 L. J. Q. B. N. S. 131, 60 L. T. N. S. 332, 37 Week. Rep. 254, 2 Tax Cas. 422.

[4] *Inland Revenue* v. *Strang* (1878), 15 Sect. L. R. 704, 1 Tax. Cas. 207.

[5] *Blakiston* v. *Cooper* [1909] A. C. 104, 78 L. J. Q. B. N. S. 135, 100 L. T. N. S. 51, 5 Tax Cas. 347.

[6] See § —, *supra.*

[7] Ruling, 1 Int. Rev. Rec. 150; Ruling, 7 Int. Rev. Rec. 35.

§ 41. [1] Act of October 3, 1913, subsection B.

[2] Ruling of the Commissioner, 1 Int. Rev. Rec. 188, *cf.* § 34 *supra.*

[3] *U. S.* v. *Smith*, 12 Int. Rev. Rec. 135, 138, Fed. Cas. No. 16,341; 3 Int. Rev. Rec. 188; 1 Int. Rev. Rec. 139. But see *Gray* v. *Darlington*, 15 Wall. 63, 65–67, 21 L. ed. 45, 46, quoted *supra*, § 34.

est and dividends derived from stocks which had not been sold, were considered as income derived from fixed investments, without reference to the time during which said stocks had been held.[4] When gains derived from the sale of stocks included interest received or accrued, the gains were regarded as derived from the business alone.[5] Profits realized during the year were returned and assessed without regard to the fact that they had been produced by the labors of previous years.[6]

According to Deputy Commissioner Speer, an increase in the value of property, at least in the case of corporations, joint-stock companies or associations, and insurance companies, should be taxed as income. His argument is as follows:

"Income from increased Property Values is a question which has heretofore given rise to considerable discussion as to whether or not an increase in property values actually constitutes income. There is much of merit on both sides of the discussion. However, for the purposes of the income tax such increases would appear to be properly returnable as income for the following reasons. First, the law provides that accrued income shall be reported: Second, an allowance for depreciation of property is made. As to the first, accruals which are known and ascertained, such as the income which a corporation may derive from any source, which income is definitely acertained, appears to be returnable. Accruals which arise from an increase in property values are largely a matter of opinion and judgment. The Bureau of Internal Revenue has held in such cases that the matter should be largely within the discretion of the corporation itself. If the corporation recognized an increase in value in any of its properties and recorded such increase in value in its books of account, then such corporation should also report the amount of such increase as income for the year in which the increase was recognized on the books of the corporation.

That increases in value recognized by book records of such increases should be reported as income is clearly evident in the consideration of the second reason—that is that an allowance for depreciation is provided for by law. This depreciation is

[4] 3 Int. Rev. Rec. 188.
[5] 3 Int. Rev. Rec. 188.
[6] 2 Int. Rev. Rec. 144.

based upon the value of the property affected. If this increase in value were not required to be reported or accounted for as income, an irresponsible corporation could, at will, increase the value of its physical assets by recording the fact of such increase on its books from time to time and then absorb the full net income of each year in the allowance for depreciation of such property upon the basis of value as shown upon its books of record. To attempt to ascertain the true net income of more than three hundred thousand corporations upon any such basis would be a practical impossibility." [7]

Mr. Walker thus replies, to this proposition: "The first of these 'reasons' is destitute of foundation; for the gross income of a person or corporation, according to the statute, does not include anything but income 'derived' or 'received,' and because, according to the statute, the net income of a person or corporation includes nothing not included in the gross income thereof. The second of Mr. Speer's 'reasons,' is destitute of foundation in logic; for the depreciation of property which is allowed for by the statute, is expressly confined to physical depreciation, due to depletion or exhaustion, or to wear and tear, arising out of the use or employment of property. There is no analogy, by way of contract or otherwise, between the statutory allowances for physical depreciation of property, and Mr. Speer's proposition to charge the owner of property with every increase in the value of property, as if that increase were income which ought to be taxed. Property may decrease in physical value, or it may decrease in market value without decreasing in physical value. On the other hand, very few kinds of property ever increase in physical value, except as a result of expenditure of other property thereon. But Mr. Speer, if permitted, will tax an increase of the market value of a piece of property, as if it were income; and he undertakes to justify such taxation by an argument from analogy; which argument he draws from the fact that the statute allows deductions from incomes, on account of decreases in physical value of property. But the supposed analogy being absent, the conclusion drawn therefrom is logically vitiated." [8]

[7] Speer's Pamphlet, pp. 37–38.

[8] Walker's Pamphlet, pp. 72–73, giving illustrations.

Under former statutes, it was ruled that the farmer, in returning the income of his farm, should enter all moneys received for animals sold and for the wool and hides of animals which had died, provided such wools and hides were sold, and to deduct therefrom the sums actually paid as purchase-money for the animals sold or which died withing the year. Where such animals were raised by the owner, it was ruled that their value could not be deducted as expenses when estimating the incomes.[9] All of the produce which is paid to a landowner for rent must be included in his income if rents are taxable. The expense of producing it may be deducted by the lessee, but cannot be deducted a second time by the lessor.[10]

Under the former internal revenue laws, it was held that a corporation did not escape the tax because it engaged in a business that was *ultra vires*.[11]

A Kentucky collector is said to have held that the tax may be assessed upon a man's winnings from cards without deducting his losses.[12] Damages recovered for torts are not profits.[13] In Great Britain, it has been held that portions of the Sundays' collections, which were paid to the incumbent because he was poor, but which otherwise he would not have received, were not subject to the income tax.[14]

§ 42. Necessary expenses actually paid in carrying on business. The necessary expenses actually paid in carrying on any business, not including personal, family or living expenses,[1] are deductible.[2] These do not include contributions to capital.[3] They do, however, include the expense of ordinary renewals of office furniture, uniforms of attendants, rugs, awnings, office hardware, door-mats, window-shades, lamps, meters and electrical wires, used in the transaction of the taxpayer's business,[4] and the replacing of worn-out tools or machinery, so far as the new articles do not exceed the value of the old, but any excess is considered to be a permanent improvement and cannot be deducted.[5] The cost of storage, fire, marine, credit and casu-

9 3 Int. Rev. Rec. 100.

10 1 Int. Rev. Rec. 154.

11 *Salt Lake City* v. *Hollister*, 118 U. S. 256. 30 L. ed. 176.

12 2 Collector Breckenridge, A. D. 1894.

13 7 Int. Rev. Rec. 60.

14 *Turton* v. *Cooper*, 92 L. T. N. S. 863, 5 Tax Cas. 138 (1905).

§ 42. 1 See § 43, *infra*.

2 Act of October 3, 1913, subsection B.

3 See § 44, *infra*.

4 *Mutual Benefit Life Ins. Co.* v. *Herold*, 198 Fed. 199, 216.

5 Ruling 2 Int. Rev. Rec. 61.

alty insurance and advertising, when connected with a business, should also be deducted.[6] The rental value of business property occupied by the owner may be deducted in England.[7] Individuals may deduct the cost of daily transportation from their dwellings to their places of business.[8] A corporation cannot charge the traveling expenses of directors from their residences to the company's office.[9] Subscriptions to an association to indemnify its members for loss by strikes were disallowed.[10] It has been held, in Great Britain, that the expense of collecting rents cannot be deducted,[11] unless they were necessarily incurred [12] but in the United States they have been allowed.[13] Where a premium was paid for a lease, it was held that it could not be considered as rent paid in advance, nor could any part thereof be deducted as an annual expense, but that the lessee might deduct the fair rental value of the premises if greater than the rent actually paid.[14] A brewing company was allowed to deduct the amount spent upon houses which it let to its tenants; [15] but not the cost of applications for additional licenses for its own houses and those of its customers, these being considered capital.[16] A mortgage company for the same reason was not allowed to deduct the commission paid brokers and other expenses of raising money loaned by it.[17] Deductions were allowed for the expenses of weeding and watching a nursery, the trees on which could not bear for several years, when it was part of a plantation.[18]

Under a former statute it was ruled that penalties imposed for a violation of the excise law might be deducted.[19]

[6] See *Foster* v. *Goddard*, 1 Black, 506, 514, 17 L. ed. 228, 230 (an accounting).

[7] *Russell* v. *Town, &c., Bank*, L. R. 13 App. Cas. 418.

[8] Ruling, 1 Int. Rev. Rec. 172; 7 Int. Rec. 60; *infra*, § 43.

[9] *Revell* v. *Directors of Elworthy Brothers & Co.* (1890) 3 Tax Cas. 12.

[10] *Rhymney Iron Co.* v. *Fowler* [1896], 2 Q. B. 79, 65 L. J. Q. B. N. S. 524, 44 Week. Rep. 651, 3 Tax Cas. 476.

[11] *Duke of Norfolk* v. *Larnarque*, L. R. 24 Q. B. Div. 485 (1890).

[12] *Stevens* v. *Bishop*, L. R. 20 Q. B. Div. 442 (1888).

[13] Ruling, 3 Int. Rev. Rec. 102.

[14] *Gillat* v. *Colquhon*, 33 Week. Rep. 258 (1885).

[15] *Smith* v. *Lion Brewery Co.* 80 L. J. K. B. N. S. 566 [1911], A. C. 150, 104 L. T. N. S. 321, 75 J. P. 273, 55 Sol. Jo. 269, 27 Times L. R. 261, 5 Tax Cas. 568, H. L. (E).

[16] *Southwell* v. *Savill Bros.* [1901] 2 K. B. 349, 70 L. J. K. B. N. S. 815, 85 L. T. N. S. 167, 49 Week. Rep. 682, 4 Tax Cas. 430.

[17] *Texas Land and Mortgage Co.* v. *Holtham* (1894), 63 L. J. Q. B. N. S. 496, 10 Times L. R. 337, 3 Tax Cas. 255.

[18] *Vallambrosa Rubber Co.* v. *Farmer* [1910], S. C. 519, 47 Scot. L. R. 488, 5 Tax Cas. 529.

[19] 4 Int. Rev. Rec. 46.

§ 43. No deduction of personal living and family expenses. Personal living and family expenses are not deducted.[1] Under earlier statutes, which allowed the deduction of the rental value of a homestead owned by the taxpayer, it was ruled that, where he rented his homestead and paid rent elsewhere, he must return the rent received, but would be allowed to deduct the amount of rent paid;[2] but that he could not charge for rent of the house which he and his family occupied unless he returned as income the rental value of any homestead that he owned;[3] that when he rented a furnished house, rent for the furniture should not be deducted;[4] that traveling expenses of those who transact business in the city and live in the suburbs[5] but usually not hotel bills,[6] nor, it was held, the railroad fares of a public officer who did not live where the office was situated[7] may be deducted. In Great Britain the wages of a domestic servant, whose employment was necessary to supply the place of the taxpayer's wife who taught school, were not deducted.[8]

In Great Britain, a minister was allowed to deduct from his salary the expense of visiting members of his congregation,[9] including the cost of keeping a horse and carriage for that purpose,[10] the expense of attending church meetings,[11] for stationery[12] and for communion expenses;[13] but not the rental value of part of his dwelling-house used as an office for the performance of his professional duties,[14] nor for the expenses of books,[15]

§ 43. [1] Act of October 3, 1913, subsection B.

[2] Ruling, 4 Int. Rev. Rec. 46. *Contra*, in Scotland, *Wylie* v. *Ecott*, Ct. Sess. S. C. 16 (1913).

[3] Ruling, 5 Int. Rev. Rec. 154.

[4] Ruling, 7 Int. Rev. Rec. 59.

[5] Ruling, 1 Int. Rev. Rec. 172; Ruling, 7 Int. Rev. Rec. 60.

[6] Ruling, 7 Int. Rev. Rec. 59.

[7] *Cook* v. *Knott*, 4 Times L. R. 164, 2 Tax Cas. 246 (1887).

[8] *Bowers* v. *Harding* [1891] 1 Q. B. 560, 60 L. J. Q. B. N. S. 474, 64 L. T. N. S. 201, 39 Week. Rep. 558, 3 Tax Cas. 22.

[9] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647.

[10] *Jarding* v. *Gillespie* [1907], S. C. 77, 44 Scot. L. R. 136, 5 Tax Cas. 263.

[11] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647.

[12] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647.

[13] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647; *Jarding* v. *Gillespie* [1907], S. C. 77, 44 Scot. L. R. 136, 5 Tax Cas. 263.

[14] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647.

[15] *Charlton* v. *Commissioners of Inland Revenue* (1890), 17 R. 785, 27 Scot. L. R. 647.

nor expenses incurred in obtaining an increase of salary,[16] nor for outlays for pulpit supplies during his holidays.[17]

Contributions to a thrift fund for the benefit of municipal employees were held not to be deductible.[18]

§ 44. Contributions to capital. Although losses of capital may be deducted,[1] contributions to new capital cannot. Such have been held to be sums paid for the purchase of new business: as payments for good will [2] or for the transfer of a concession; [3] payment to the manager of the business purchased of a commutation for salary promised him upon the transfer,[4] guaranteed interest paid, during the construction of new works, to shareholders of companies thus purchased,[5] the cost of moving a business and the machinery therewith connected,[6] at least when not necessitated by a fire, contributions to a sinking fund,[7] and to a repair fund,[8] the expense of improving the roadbed of a railroad or replacing its line with steel in place of iron rails and chairs of additional weight,[9] the cost of brewers' printing and advertising in connection with applications for additional licenses for houses owned and leased by them and also for houses of their customers; [10] and a bonus paid or agreed to be paid when capital was borrowed.[11]

16 *Jarding* v. *Gillespie* [1907], S. C. 77, 44 Scot. L. R. 136, 5 Tax Cas. 263.

17 *Jarding* v. *Gillespie* [1907], S. C. 77, 44 Scot. L. R. 136, 5 Tax Cas. 263.

18 *Hudson* v. *Gribble* [1903], 1 K. B. 517, 72 L. J. K. B. N. S. 242, 88 L. T. N. S. 186, 51 Week. Rep. 457, 4 Tax Cas. 522. *Contra*, *Beaumont* v. *Bowers* [1900], 2 Q. B. 204.

§ 44. 1 *Infra*, § 47.

2 5 Int. Rev. Rec. 188.

3 *London Bank of Mexico and South America* v. *Apthorpe* [1891], 2 Q. B. 378, 60 L. J. Q. B. N. S. 653, 65 L. T. N. S. 601, 39 Week. Rep. 564, 3 Tax Cas. 143.

4 *Royal Insurance Co.* v. *Watson* [1897], A. C. 1, 66 L. J. Q. B. N. S. 1, 75 L. T. N. S. 334, 3 Tax Cas. 500.

5 *City of London Contract Corporation* v. *Styles* (1887), 4 Times L. R. 51, 2 Tax Cas. 239.

6 *Granite Supply Association* v. *Kitton* (1905), 8 F. 55, 43 Scot. L. R. 65, 5 Tax Cas. 168; *Smith* v. *Westinghouse Brake Co.* 2 Tax Cas. 357; Dowell on Income Tax, 7th ed., p. 117, note.

7 *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax Cas. 101.

8 Ruling, 2 Int. Rev. Rec. 100.

9 *Highland Ry. Co.* v. *Balderston* (1889), 26 Scot. L. R. 657, 2 Tax Cas. 485.

10 *Southwell* v. *Savill Brothers* [1901], 2 K. B. 349, 70 L. J. K. B. N. S. 815, 85 L. T. N. S. 167, 49 Week. Rep. 682, 4 Tax Cas. 430.

11 *Arizona Copper Co.* v. *Smiles* (1891), 29 Scot. L. R. 134, 3 Tax Cas. 149. See *Texas Land and Mortgage Co.* v. *Holtham* (1894), 63 L. J. Q. B. N. S. 496, 10 Times L. R. 337, 3 Tax Cas. 255.

§ 45. **Deductions for depreciation.** In computing the net income of individuals for the purpose of the normal tax, there are allowed as deductions: "sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided,* That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate." [1]

The Act further provides: That in ascertaining the net income of corporations, joint-stock companies or associations, or insurance companies, there shall be deducted "a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made." [2] The concluding clauses of the provision concerning the deductions for individuals are omitted.

It has been held in Great Britain: That a depreciation in the value of machinery due to a removal of the works is a loss of capital and is not deductible as a loss of income; and the deduction for wear and tear is a deduction for diminished value as a means of earning income and not as a salable subject; [3] that a railway company, consequently, can make no deduction for the purchase of new rolling stock; [4] that a diminution in market value, apart from that caused by wear and tear, cannot be allowed; [5] that a loss of earning power, caused by the fact that a ship had become more or less obsolete, cannot be allowed.[6] When the operation of a street railway company had been

§ 45. [1] Act of October 3, 1913; Subsection B.

[2] *Ibid.* G (b.).

[3] *Smith* v. *Westinghouse Brake Co.* 2 Tax. Cas. 357.

[4] *Calendonian Ry. Co.* v. *Banks* (1888) R. 59, 18 Scot. L. R. 85; 1 Tax Cas. 487.

[5] *Ibid.*

[6] *Burnley Steamship Co.* v. *Aikin* (1894) 21 R. 965, 31 Scot. L. R. 803, 3 Tax Cas. 275.

changed from horse to electric power in England, no deduction was allowed for horse cars which, although not worn out, had been discarded, nor for so much of the track as had been reconstructed, although its life was below the average life of rails.[7] It is not the custom in Great Britain to allow the amount spent by the owner of a mine in making bores and sinking pits which are exhausted in the year.[8] A charge on the books of the corporation of a depreciation fund, to be expended in future years in the restoration of the plant, does not entitle the taxpayer to a deduction, unless the depreciation has actually occurred.[9] Where a premium was paid upon the purchase of a lease, the buyer was not allowed to deduct from the remainder of the term any portion thereof.[10] Under the Corporation Tax Law of 1909, the Department ruled as follows: "Deduction on account of depreciation of property must be based on lifetime of property, its cost, value, and use." [11] "Deduction on account of depreciation of property must be based on lifetime of property, its cost, value, and use, and must be evidenced by a ledger entry and a like reduction in the plant and property account with respect to which the depreciation is claimed." [12] "Where increase or decrease during the year in the value of real estate acquired in previous years, sold or held for sale, is taken up on the books and the rate cannot be accurately determined with respect to individual years, such increase or decrease may be prorated as provided by regulations in cases of sale of capital assets." [13] "Where a corporation or insurance company holds bonds which were purchased at a rate above par, and a proportionate deduction of the value

[7] *London County Council* v. *Edwards* (1909) 100 L. T. N. S. 444, 73 L. J. Prob. N. S. 213, 25 Times L. R. 319, 5 Tax. Cas. 383.

[8] *Coltness Iron Co.* v. *Black* (1881) L. R. 6 App. Cas. 315, 51 L. J. Q. B. N. S. 626, 45 L. T. N. S 145, 29 Week. Rep. 717, 1 Tax Cas. 287; *Bonner* v. *Bassett Mines, Limited*, Law Times, Dec. 21st, 1912, p. 179; *Addie & Sons* v. *Solicitor of Inland Revenue* (1875) 2 R. 431, 12 Scot. L. R. 274, 1 Tax Cas. 1. See *Morant* v. *Wheal Grenville Mining Co.* (1894) 71 L. T. N. S. 758, 3 Tax Cas. 298.

[9] *Clayton* v. *Newcastle-under-Lyme Corporation* (1888) 2 Tax Cas. 416.

[10] *Watney* v. *Musgrave* (1880) L. R. 5 Exch. Div. 241, 49 L. J. Exch. N. S. 493, 42 L. T. N. S. 690, 28 Week. Rep. 491, 1 Tax Cas. 272; *Gillatt & Watts* v. *Colquhoun* (1884) 33 Week. Rep. 258, 2 Tax Cas. 76.

[11] Synopsis, T. D. 1742.

[12] Synopsis, T. D. 1742.

[13] Synopsis, T. D. 1742.

of such bonds is made on its books each year so that the book value shall be the redemption value of the bonds when they become due and payable, the return of annual net income may show the depreciation on account of amortization of such bonds." [14] "In the case of corporations owning stocks and bonds or other securities, if an annual adjustment of the value of such securities is made and the adjusted values made a matter of ledger entry, the appreciation of such securities as so entered must be accounted for as income, and the depreciation may be deducted from gross income. If no annual adjustment is made, and the securities are carried from year to year as a permanent investment, there will be neither gain nor loss, as to the principal of such securities, until the same shall have been disposed of, when the gain or loss as compared with the original cost shall be prorated, and the amount of such gain or loss apportioned to the years since the incidence of the tax, to wit, January 1, 1909, shall be added to or deducted from the gross income of the year in which the securities were so disposed of." [15] "Premiums on stocks and bonds arbitrarily charged off on the books of a corporation do not constitute a proper deduction on account of depreciation, unless there shall have been an actual shrinkage in value of such stocks and bonds to the extent of the deduction claimed during the year for which the return is made." [16] "Loss due to voluntary removal of buildings, etc., incident to improvements is either a proper charge to the cost of the new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation." [17] " 'Good will' represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed." [18] "Depreciation to be an allowable deduction in the return of annual net income of a corporation must be charged off on the ledger of the corporation, so as to show a reduction in the capital assets of the

[14] T. D. 1727.
[15] Synopsis, T. D. 1742.
[16] Synopsis, T. D. 1742.
[17] Synopsis, T. D. 1742.
[18] Synopsis, T. D. 1742.

corporation to the extent of the depreciation claimed." [19] "Depreciation of company's stock a loss to the stockholders, but not a loss to the company issuing the same, and therefore not a proper deduction." [20]

Any regulations by the Department upon the subject will be discussed in the chapter on "Returns and Assessments."

§ 46. Deductions for interest. Deductions for interest when paid by individuals and by corporations, joint-stock companies or associations, or insurance companies, are regulated by different rules. An individual can deduct all interest paid by him within the year upon indebtedness.[1] According to the Deputy Commissioner of Internal Revenue, "This, of course, would be confined to the interest paid within the year on the indebtedness of the taxable person and naturally, in the ascertainment of the income for any one year, should not include any interest which had accumulated and had been payable in previous years." [2] This statement is criticised by Mr. Albert H. Walker as follows: "In order to make the statute convey Mr. Speer's idea, it would have to be amended by inserting after the word 'year,' the words 'and not payable in any previous year.' Neither Mr. Speer nor anybody else has any authority to amend the statute by any such limitation." [3] A domestic corporation, joint-stock company or association, or insurance company, can deduct only "(third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing

[19] Synopsis, T. D. 1742.
[20] Synopsis, T. D. 1742.
§ 46. [1] Act of October 3, 1913, Subsection B.
[2] Speer's Pamphlet, p. 15.
[3] Walker's Pamphlet, p. 67.

business: Provided further, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed: and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and security by interest-bearing certificates of indebtedness issued by such bank, banking associations, loan or trust company." [4]

A foreign corporation, joint-stock company or association, can deduct only "(third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided,* That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed," [5] Several difficulties in the construction of these clauses may arise. Amongst others, the meaning of the phrase "collateral the subject of sale in ordinary business of such corporation, joint-stock company or association." Does the omission of the term "insurance company" imply that a deduction of the interest upon indebtedness wholly secured by collateral may not be deducted by an insurance company? Does the term "collateral" include mortgages of real estate? Can a corporation whose ordinary business is borrowing money secured by mortgages upon real estate made by such company or by a stranger to the loan to the company, or a part of whose ordinary business is the sale of mortgages made by others, the interest upon which it guarantees, deduct the whole amount of such interest? Any regulations by the Department upon the

[4] Act of October 3, 1913, Subsection G (b).

[5] *Ibid.*

subject will be discussed in the chapter on "Returns and Assessments."

§ 47. **Losses deductible by individuals from income.** The statute provides that, in case of individuals, there is to be a deduction of "fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided,* That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate."[1] It will be observed that the act does not provide for a deduction of losses, not incurred in trade, sustained by a railroad wreck,[2] or by personal injuries.

The rule in Great Britain is, that to authorize a deduction the loss must be connected with a trade, so as to be incidental thereto, or arise out of the same, and that they cannot be if they are mainly incidental to some other vocation or fall on the trader in some other character.[3] "The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers for accidents in traveling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted."[4]

Under the former statute, it was ruled that losses could not

§ 47. [1] Act of October 3, 1913, Subsection B.

[2] See Walker's Pamphlet.

[3] *Strong & Co. Limited* v. *Woodifield* [1906] A. C. 448, 75 L. J. K. B. N. S. 864, 95 L. T. N. S. 241, 22 Times L. R. 754, 5 Tax. Cas. 215.

[4] *Ibid.* p. 452, per Lord Chancellor Loreburn.

Under a former act it was ruled that money paid to satisfy a judgment for a tort could not be deducted. 1 Int. Rev. Rec. 155.

be deducted which were not incurred in trade, although suffered by an individual taxpayer, such as loss by robbery,[5] or loss through the default of a principal, to whom the taxpayer had been a surety.[6] But inasmuch as the payment by a surety makes the principal his debtor, it was ruled that such a debt might be deducted if "ascertained to be worthless."[7] It was also ruled that a debt might be deducted when it became worthless, although it had existed and been payable during a previous year, when no deduction on account thereof was made.[8]

According to Deputy Commissioner Speer, debts may be considered to be found worthless only after legal proceedings to recover the same have proved fruitless, or it is clearly evident that the debtor is insolvent and that proceedings to collect the debt would avail nothing.[9]

Mr. Walker disputes this position as follows: "This would be an absurd provision to put into the statute, for legal proceedings to recover a debt could not be 'proved fruitless' without the expenditure of more money than the creditor could afford, and without the passage of months or even years during the litigation. And nothing but litigation would make it 'clearly evident' that a debtor is insolvent, and that proceedings to collect the debt would avail nothing. Fortunately, this idea of Mr. Speer has no foundation in the statute; for the statute clearly authorizes debts due to the taxpayer, to be deducted from his gross income, in ascertaining his net income, whenever such a debt is ascertained, to the satisfaction of the taxpayer, to be worthless, and is thereupon 'charged off' by him from his account books."[10] Any regulations by the Department upon the subject will be discussed in the chapter on "Returns and Assessments." It was held in a prosecution for perjury that the taxpayer has a discretion in estimating the value of debts which are due him, which he may exercise within the limits of good faith, and that he will not be criminally responsible for an untrue return thus made.[11] It was also intimated that a taxpayer will

5 See 5 Int. Rev. Rec. 123.
6 5 Int. Rev. Rec. 123.
7 5 Int. Rev. Rec. 188.
8 Regulation III. under Act of 1894.
9 Speer's Pamphlet.
10 Walker's Pamphlet, p. 66.
11 *U. S.* v. *Frost*, 9 Int. Rev. Rec. 41, Fed. Cas. No. 15,172; *U. S.* v. *Mayer*, 1 Deady, 127, Fed. Cas. No. 15,753.

not be allowed to leave his debts uncollected in order to evade the tax.

The losses and gains of a firm, of which a taxpayer is a member, are considered as incidental to the business.[13] Under a former statute it was ruled: that losses incurred in the prosecution of one branch of a business could not be deducted from the gains in another, since an absolute loss incurred in the prosecution of a single business was a loss of capital;[14] that losses in speculation incident to the business, such as speculation by a broker in stocks, by a dry-goods merchant in cotton, by a hardware man in iron, might be set off against the gain in that part of his business which was conducted without speculation;[15] but that loss in speculation could not be deducted from gains in merchandise of an entirely different character from the subject of the speculation, nor from salaries;[16] but that losses and gains of speculations of a different character might be deducted from each other;[17] that losses in one branch of merchandise might be deducted from gains in any other branch;[18] and that where stocks were bought as a permanent investment and sold for a change of investment, a loss in such sale might be deducted from the dividends thereupon, but that where the purchase and sale were made in speculation, such loss could not be so deducted.[19] Where brewers as an adjunct of their brewing trade acted as bankers and money lenders by making loans to customers on the security of public houses, it was held that they might deduct from the profits of brewing the losses on such loans.[20] When shippers, who, by their articles, could not own more than one ship at a time, lost a boat at sea, and with the insurance money bought another, with which they traded during the balance of the year, the losses and gains on both ships were set off against each other.[21] In Scotland, it was

[12] *U. S.* v. *Frost*, 9 Int. Rev. Rec. 41, Fed. Cas. No. 15,172.

[13] Ruling, 4 Int. Rev. Rec. 46.

[14] Ruling, 1 Int. Rev. Rec. 154.

[15] *Ibid.*

[16] Ruling, 1 Int. Rev. Rec. 155.

[17] 1 Int. Rev. Rec. 155. See 3 Int. Rev. Rec. 109.

[18] Ruling, 1 Int. Rev. Rec. 155.

[19] Ruling, 1 Int. Rev. Rec. 196.

[20] *Reid's Brewery Co.* v. *Male* [1891] 2 Q. B. 1, 60 L. J. Q. B. N. S. 340, 64 L. T. N. S. 294, 39 Week. Rep. 459.

[21] *Merchiston Steamship Co.* v. *Turner* [1901] 2 K. B. 923, 102 L. T. N. S. 363—Bray, J.

held that the losses of a partner could not be deducted from the profits of the business of a sea merchant.[22]

§ 48. **Losses deductible by corporations, joint-stock companies and associations.** In the case of corporations, joint-stock companies or associations, or insurance companies, there must be a deduction of "all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made." [1] All losses not compensated by insurance or otherwise must consequently be deducted, whether they were incurred in trade or not.[2] Thus, a loss by embezzlement may be deducted,[3] provided that an allowance is made by a credit of any net amount recovered from the defaulter that has absconded.[4] The act makes no provision for debts actually ascertained to be worthless and charged off within the year. Under a former statute, which made no such exception, it was ruled that a debt might be deducted as soon as it became worthless, although it had existed and been payable during a previous year, when no deduction on account thereof was made.[5]

The Privy Council held when construing the New Brunswick Act imposing a tax upon income that "in the natural and ordinary meaning of language, the income of a bank or trade for any given year would be understood to be the gain, if any, resulting from the balance of the profits and losses of the business in that year;" and that the bad debts of the year must be deducted and could not be excluded from consideration as "a loss *pro tanto* of capital." [6]

Any regulations by the Department upon the subject will be discussed in the chapter on "Returns and Assessments."

22 *Brown* v. *Watt*, 23 Scot. L. R. 403, 50 J. P. 583, 2 Tax. Cas. 143.

§ 48. 1 Act of October 3, 1913, Subsection G (b).

2 *U. S.* v. *Central National Bank*, 10 Fed. 612; s. c., 15 Fed. 223.

3 *Ibid.*

4 Solicitor General Phillips, 13 Ops. Atty. Gen. 643.

5 Regulation III. under Act of 1894.

6 *Lawless* v. *Sullivan*, L. R. 6 App. Cas. 373, 378, 379, 382, per Sir MONTAGUE E. SMITH, A. D. 1881.

§ 49. Deductions by domestic insurance companies. In determining the net income of a domestic insurance company, there should be deducted: "(First) All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property." [1] In this are included the expenditures for uniforms of attendants and office furniture and equipment, including rugs, awnings, small hardware, doormats, widow-shades, lamps, meters, electric wires and fixtures, and other articles of a similar character, which are no greater than the previous yearly average of similar expenses.[2] (Second) All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any.[3] (Third) 'The net addition, if any, required by law to be made within the year to reserve funds. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds are treated as payments required by law to reserve funds.[4] Under the Corporation Tax Law of 1909, it was held that a deduction might be made of additions to the reserve fund to secure payment upon supplemental policy contracts. These consisted of policies under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of years, instead of in a lump sum.[5] (Fourth) "Sums other than dividends paid within the year on policy and annuity contracts." [6] All life insurance companies may deduct or omit from their return any part of the actual premium which is paid back or credited to an individual policyholder or treated as an abatement of his premium within the year, although the same is termed "a dividend." [7] Mutual fire insurance companies

§ 49. [1] Subsection G (b).

[2] *Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199, 216.

[3] Subsection G (b). See §§ 45, 48, *supra*.

[4] Subsection G (b).

[5] *Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199, 212.

[6] Subsection G (b).

[7] Subsection G (b). *Cf. Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199; *New York Life Insurance Co.* v. *Styles* (1889) L. R. 14 App. Cas. 381, 59 L. J. Q. B. N. S. 291, 61 L. T. N. S. 201; 2 Tax Cas. 460. *Contra*, *Last* v. *London Assur-*

may deduct or omit from their return any part of the premium deposits returned to policyholders.[8] Mutual marine insurance companies may deduct all amounts repaid to policy-holders on account of premiums previously paid by such, with payments for interest upon the same.[9] (Fifth) The amount of interest accrued and paid within the year upon so much of its indebtedness, whether bonded or otherwise, as does not exceed one-half of the sum of its interest-bearing debts and its paid-up capital stock; or if, like a mutual insurance company, it has no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the year's close; but where the indebtedness is wholly secured by collateral, the subject of sale in ordinary business of the company, which may possibly apply to loans upon life insurance policies, the total interest secured and paid upon such indebtedness may be thus deducted.[10] (Sixth) The amount actually paid within the year for taxes imposed under the authorities of the United States, or of any State or Territory thereof, or imposed by the Government of any foreign country.[11] Whether the tax as imposed under the authority of the District of Columbia can be deducted by insurance companies not organized in foreign countries is not specifically stated.

§ 50. Deductions by alien insurance companies. The taxable net income of an insurance company organized, authorized or existing under the laws of any foreign country, is ascertained by making from the gross amount of its income accrued within the year from business transacted and capital invested within the United States the following deductions: "(First) All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property."[1] In this are included the expenditures for uniforms of attendants

ance Corporation (1885) L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax. Cas. 100.

[8] Subsection G (b).

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

§ 50. [1] Act of October 3, 1913, Subsection G (b).

and office furniture and equipment, including rugs, awnings, small hardware, door-mats, window-shades, lamps, meters, electric wires and fixtures, and other articles of a similar character, which are no greater than the previous yearly average of similar expenses.[2] (Second) All losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property if any.[3] (Third) The net addition, if any, required by law to be made within the year to reserve funds. In the case of a foreign assessment insurance company, the actual deposit of sums with State or Territorial officers, pursuant to law, as addition to guarantee or reserve funds, is considered as a payment required by law to a reserve fund.[4] Under the Corporation Tax Law of 1909, it was held that a deduction might be made of additions to the reserve fund to secure payment upon supplemental policy contracts, consisting of policies, under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of years, instead of in a lump sum.[5] (Fourth) Sums other than dividends paid within the year on policy and annuity contracts.[6] All life insurance companies may deduct or omit from their return any part of the actual premium which is paid back or credited to an individual policyholder or treated as an abatement of his premium within the year, although the same is termed "a dividend."[7] Mutual fire insurance companies may deduct or omit from their return any part of the premium deposits returned to policyholders.[8] Mutual marine insurance companies may deduct all amounts repaid to policyholders on

[2] *Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199, 216.

[3] Subsection G (b). See § 48, *supra*.

[4] Subsection G (b).

[5] *Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199, 212.

[6] Subsection G (b).

[7] Subsection G (b). *Cf. Mutual Benefit Life Insurance Co.* v. *Herold*, 198 Fed. 199; *New York Life Insurance Co.* v. *Styles* (1889) L. R. 14 App. Cas. 381, 59 L. J. Q. B. N. S. 291, 61 L. T. N. S. 201; 2 Tax Cas. 460. *Contra, Last* v. *London Assurance Corporation* (1885) L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax. Cas. 100.

[8] Subsection G (b).

account of premiums previously paid by such, with payments for interest upon the same.[9] (Fifth) The amount of interest accrued and paid within the year on its indebtedness, to an amount of indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.[10] (Sixth) The amount actually paid within the year for taxes imposed under the authority of the United States, or by any State or Territory thereof, or the District of Columbia.[11]

§ 51. **Deductions from income of husband and wife.** "That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her, but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife. *Provided,* That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together." [1]

Under the earlier statutes it was ruled: that where the members of a family disagreed upon the apportionment of the amount of an exemption, the case might be referred to the Internal Revenue Office; [2] and that any joint exemption or deduction should be shared in proportion to the respective incomes.[3]

The Treasury Regulations seem to consider this subsection as authorizing a husband and wife, who live apart, each to deduct $3,000; but when they live together, to permit a deduction of $4,000 only from the aggregate income of both. There is

9 *Ibid.*
10 *Ibid.*
11 *Ibid.*

§ 51. [1] Act of October 3, 1913, Subsection C.

[2] 1 Int. Rev. Rec. 149.
[3] 1 Int. Rev. Rec. 188.

at least, room for argument to the effect that when they live together each is entitled to a deduction of $3,000 and that the additional exemption of $1,000 shall be apportioned between them.

§ 52. Deductions by guardians. Guardians pay no tax upon the income of their wards, unless the latter's net annual income is $3,000 or over.[1] The ward is entitled to this deduction by his guardian, whether he lives with his parents or not, and if there are several wards it seems that the deduction will be allowed to each, even if they live together.[2] The guardian must deduct and pay to the Government the tax upon so much of the income of his ward as exceeds $3,000 for any taxable year "other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein."[3]

§ 52. [1] Act of October 3, 1913, Subsection D.

[2] Ruling, 11 Int. Rev. Rec. 153. See 1 Int. Rev. Rec. 171.

[3] Act of Oct. 3, 1913, II. Subsection D.

CHAPTER V.

RETURNS AND ASSESSMENTS.

§ 53. **Individuals who must make return.** The Act of August 5, 1861 contained no provision for ascertaining the amount of the tax due. This, perhaps, may explain the fact that no taxes were ever collected thereunder. The subsequent statutes regulated the subject. The present act contains minute provisions to that end. Returns must be made by individuals and by corporations, joint-stock companies and associations. Each of these classes must make return on behalf of themselves and also for others, on whose behalf they collect income in certain cases. Returns must be made by all individuals over lawful age, subject to the tax, and having a net income of $3,000 for a taxable year, provided that such an amount of their respective incomes was not derived from a source at which the tax has been already paid.[1] Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, must make return of the net income of the beneficiaries of their respective trusts, in each case, when such net income equals at least $3,000, provided that no essential part of such minimum is income upon which the tax has been already paid at its source; but a return made by one of two or more of such persons jointly acting in a fiduciary capacity, is sufficient.[2] All persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, amounting to at least $3,000, must make a separate and distinct return of such portion of that person's income.[3] In

§ 53. [1] Subsection D.
[2] *Ibid.*
[3] *Ibid.*

this class are apparently included lessees, mortgagees of property, real and personal, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, officers and employees of the United States. The trustees under deeds of trust or similar obligations of corporations, joint-stock companies or associations, and insurance companies, and such corporations, joint-stock companies, associations and insurance companies, when mortgagors or obligors upon bonds or similar obligations, deduct and pay the tax upon all fixed and determinable annual gains, profits and income, derived from interest upon such bonds, mortgages and deeds of trust, although such interest does not amount to $3,000.[4] And the Treasury Regulations direct that each shall file with the collector of internal revenue for his, her or its district, a certificate of such deduction, which is in the nature of a return. The disbursers within the United States, or the collectors and vendors of coupons, checks or bills of exchange, for or in payment of dividends upon the stock or interest upon the obligations of foreign corporations, associations and insurance companies, engaged in business in foreign countries, and all dealers in the same who buy them otherwise than from a bank or other dealer in such coupons, are required to deduct and pay the tax thereupon; although such interest, dividends or other compensation does not exceed $3,000.[5] The Treasury Regulations provide that: "Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted, and from what source collected."

When an individual wishes to enforce a statutory deduction from the tax upon income paid at its source, that is, by one of the persons above specified, he must file with the person who is required to withhold and pay the tax for him, a true and correct return of his annual gains, profits, and income from all other sources and also the deductions asked for, and the showing thus made must then become a part of the return made in his

[4] Subsection E.

[5] *Ibid.*

behalf by the person required to withhold and pay the tax; or he must make a similar application for deductions to the collector of the district in which return is made or to be made for him; unless he is a minor, or insane, or absent from the United States, or unable owing to serious illness to make such return and application, in which case such return and application may be made for him or her by the person required to withhold and pay the tax, if the latter swears that he has sufficient knowledge of the affairs and of the property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.[6] The statute fails to state expressly whether such supplemental return when made by or in behalf of the recipient of the income or whether the application to the collector must be supported by an affidavit as to the truth of the matters therein stated.

It was ruled under the Act of July 14, 1870, which in section 11 required returns from all persons "whose gross income during the preceding year exceeded $3,000," that persons whose income did not exceed that figure need not make returns, nor even make affidavit that their incomes did not exceed that sum.[7] This practice would seem to be correct under the present law. There is no provision requiring or compelling any affidavit, except that providing a return, and if no return is made there would seem to be no reason for any affidavit.

The statute prescribes that returns shall be made by all persons of lawful age,[8] a provision that is repeated from former acts. It was ruled formerly that a minor, if he had no guardian, should make return himself; but that if he refused, an independent assessment should be made, as in other cases, without, however, imposing any penalty.[9] A subsequent ruling under a former statute was that when a minor had no guardian, the father, if living, was responsible for the return as being the child's natural guardian, and if he had legal control of the minor's income he should return it with his own.[10] If he has such legal control, that would seem to be the present law.

If the taxpayer is unwilling or for any reason unable to make the return himself, it is provided: "That if any person

6 Subsection D.
7 13 Int. Rev. Rec. 97.
8 Subsection D.
9 7 Int. Rev. Rec. 59.
10 1 Int. Rev. Rec. 68.

liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person." [11]

The Revised Statutes, as amended by this Act, provide: "When any person, corporation, company or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view or information, such list or return, according to the form prescribed, of the income * * * liable to tax, owned, or possessed, or under the care or management of such person, or corporation, or company, or association." [12]

In case of a refusal or neglect to make a return in due time, and in case of a false or fraudulent return, the Commissioner of Internal Revenue "shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law." [13]

§ 54. Returns by copartnerships. All firms having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of any person subject to the tax, must make such return whenever such person's annual income is equal to at least $3,000.[1] "Any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct state-

[11] U. S. Rev. Stat. § 3173, U. S. Comp. Stat. 1901, p. 2065, as amended by subsection I, b, this Act.

[12] 15 U. S. Rev. Stat. § 3176.

[13] Subsection E.

§ 54. [1] Act of October 3, 1913, Subsection D.

ment of such profits and the names of the individuals who would be entitled to the same, if distributed." [2]

§ 55. Corporations, companies and associations which must make return. All corporations, joint-stock companies or associations, and insurance companies, subject to the tax, must make an annual return, under oath or affirmation, by their respective presidents, vice-presidents or other principal officers, and treasurers or assistant-treasurers.[1] Under similar language in the Corporation-Tax Law of August 5, 1909,[2] it was ruled that all corporations, subject to the statute, must make the return whether their income was less than the taxable amount or not.[3] That corporations organized during the year or going into liquidation during the year must, nevertheless, render a sworn return on the prescribed form.[4] That where a company had dissolved and the required return was not made by its officers, such return would be prepared by the Commissioner.[5] That where a corporation had gone into bankruptcy, returns in such a case must be made by its trustees in bankruptcy.[6] That foreign companies, having several branch offices in the United States, should each designate one of such branches as its principal office and should also designate the proper officers to make the proper returns.[7] That where a consolidation of two or more corporations had been effected during the year, and each or any such corporation subsequent to the consolidation collected prior existing debts, each such corporation should make separate return and include therein all such collected debts, as also all income received during the year therefrom to the date of consolidation.[8]

It seems that all corporations, joint-stock companies or associations, and insurance companies, which are mortgagors, obligors under bonds or trustees under deeds of trust, under which fixed and determinable annual gains, profits and income are derived from interest thereupon, must make a return of the same, although such interest does not amount to $3,000.[9] All

[2] *Ibid.*

§ 55. [1] Subsection G.

[2] 36 Stat. at L. 112, § 38, chap. 6, U. S. Comp. Stat. Supp. 1911, p. 946.

[3] Opinion of Attorney-General, January 24, 1910.

[4] Treasury Department, Synopsis of Decisions, December 15, 1911; T. D. 1742.

[5] T. D. 1736.

[6] T. D. 1742.

[7] *Ibid.*

[8] *Ibid.*

[9] Subsection B.

firms, companies, co-partnerships, corporations, joint-stock companies or associations, and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, must make such return whenever such persons annual income is equal to at least $3,000.[10]

"All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year or both, in the discretion of the court." [11]

"When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view or information, such list or return, according to the form prescribed, of the income * * * liable to tax, owned, or possessed or under the care or management of such person, or corporation, or company, or association." [12]

A previous section of the present law provides: "In cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, * * * the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law." [13]

[10] Subsection D.
[11] Subsection E.
[12] U. S. Rev. Stat. § 3176, U. S. Comp. Stat. 1901, p. 2068.
[13] Subsection G (*c*).

§ 56. **Time of the return.** The return must be made by individuals on or before March 1, 1914, and the first day of March in each year thereafter.[1] When an individual seeks to be allowed the benefit of any deduction authorized by the statute, he must not less than thirty days prior to March first file with the person who is required to withhold and pay tax for him, a true and correct return of his annual gains, profits and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return made in his behalf by the person required to withhold and pay the tax, or else he must make to the collector of the district in which return is made or to be made for him, an application in a similar form for deductions.[2] The return must be made by a corporation, joint-stock company or association, and insurance company, subject to the tax, on its own behalf, on or before the first day of March, 1914, and the first day of March in each year thereafter, unless it has designated the last day of any month in the year as the day of the closing of its fiscal year. In such case, it must give notice of the day thus designated to the collector of the district in which its principal business office is located, "at any time not less than thirty days prior to the date upon which its annual return shall be filed." It must then render its return within sixty days after the close of its fiscal year and within sixty days after the close of its fiscal year in each year thereafter.[3] Whether such a corporation, joint-stock company, association or insurance company must make its return of income belonging to a beneficiary of a trust or other person, which it pays at the source thereof, on the first day of March or at sixty days after the time which it has designated for the return of its own net income, is not stated by the Act. "In case of neglect occasioned by sickness or absence, the collector may allow such further time for making or delivering such list or return as he may deem necessary not exceeding thirty days."[4] "Before extending the time for making and delivering such return, collectors should be informed by affidavit of such persons, or other evidence that the failure to

§ 56. [1] Subsection D.
[2] Subsection D.
[3] Subsection G. (*c*).
[4] U. S. Rev. Stat. § 3176, U. S. Comp. Stat. 1901, p. 2068, as amended by Act of October 3, 1913, subsection 1.

make or deliver such return was due solely to one or both of the causes above mentioned." [5]

The amended Revised Statutes provide: "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation." [6] Under the early statutes it was ruled that a want of notice did not relieve the taxpayer from the statutory penalty.[7]

§ 57. Place of return. The return must be made, in the case of an individual, on his own behalf, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States.[1] The statute fails to state the place of the return of income not taxed at its source received by a citizen of the United States who resides in a foreign country. The statute provides that returns of the net incomes of the persons for whom they act, made by guardians, trustees, executors, administrators, agents, receivers, conservators, or any persons, corporations or associations acting in a fiduciary capacity, shall "be subject to all the provisions of this section which apply to individuals: Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which the cause

[5] Regulation.

[6] U. S. Rev. Stat. § 3173, as amended by Act of October 3, 1913, subsection I.

[7] 3 Int. Rev. Rec. 151; see 1 Int. Rev. Rec. 113.

§ 57. [1] Subsection D.

is recorded," shall be sufficient.[2] There is room for a difference of construction upon the question, whether by "in the district where such person resides," in this clause, is intended the district of the residence, person acting in a fiduciary capacity or that of the beneficiary. The statute further provides that a return made by persons, firms, companies, co-partnerships, corporations, joint-stock company or associations, and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, shall "make and render a return as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person, or stating that the name and address or the addresses, as the case may be, are unknown."[3] Apparently the intent is that this return be filed at the residence or principal place of business of the returner. And the Regulations of the Treasury Department so direct.[4]

What constitutes residence within the act may be a matter of some difficulty. The place where a taxpayer exercises his franchise is ordinarily presumed to be that of his residence.[5]

Every corporation, joint-stock company, association and insurance company, subject to the tax, must file the return with the collector of the district in which its principal place of business is located.[6]

COLLECTION DISTRICTS; HOW NUMBERED.

For the purpose of assessing, levying and collecting internal revenue taxes the law provides that the President may establish convenient collection districts, the number of which, however, is limited by law, which at the present time is sixty-three districts.

At one time there were as many collection districts as there were representatives in Congress, and they were numbered consecutively for each state.

The number of districts was afterwards reduced, but each newly formed district retained the original number assigned to the district in which the collector's office is located.

For example, the collection district with headquarters at Buffalo, N. Y.,

[2] *Ibid.*
[3] *Ibid.*
[4] *Supra*, § 50.
[5] See Foster's Fed. Pr. 5th ed. § 46.
[6] Subsection G (*c*).

is the 28th District of New York, although the State of New York now has but six collection districts.

In Pennsylvania the district including Philadelphia is number 1, the original number for that district, and the Pittsburgh district is number 23, the original number for that district, although there are now but four collection districts in the State of Pennsylvania.

Changes in the territory of districts are made from time to time but the name and address of the collector for any district is easily ascertained upon inquiry at any cigar store, bank, etc.

LOCATION OF COLLECTORS' OFFICES.

Alabama, (including the State of Mississippi).	Birmingham, Ala.
Arkansas,	Little Rock, Ark.
1st California, (including the counties of Alameda, Alpine, Amador, Butte, Colusa, Calaveras, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humbolt, Inyo, Kings, Lake, Lassen, Marin, Mendocino, Modoc, Madera, Maripose, Merced, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumna, Tehama, Trinity, Yolo, and Yuba, and the State of Nevada).	San Francisco, Cal.
6th California, (including counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura).	Los Angeles, Cal.
Colorado, (including the State of Wyoming).	Denver, Colo.
Connecticut, (including the State of Rhode Island).	Hartford, Conn.
Florida,	Jacksonville, Fla.
Georgia,	Atlanta, Ga.
Hawaii,	Honolulu.
1st Illinois, (including the counties of Boone, Carroll, Cook, DeKalb, Dupage, Grundy, Jo Daviess, Kane, Kankakee, Kendall, Lake, Lasalle, Lee, McHenry, Ogle, Stephenson, Whiteside, Will, and Winnebago).	Chicago, Ill.

5th Illinois, (including the counties of Bureau, Henderson, Henry, Knox, Marshall, Mercer, Peoria, Putnam, Rock Island, Stark, and Warren).	Peoria, Ill.
8th Illinois, (including the counties of Adams, Bond, Brown, Calhoun, Cass, Champaign, Christian, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Iroquois, Jersey, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Tazewell, Vermilion, and Woodford).	Springfield, Ill.
13th Illinois, (including the counties of Alexander, Clarke, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White and Williamson).	E. St. Louis, Ill.
6th Indiana, (including the counties of Adams, Allen, Bartholomew, Benton, Blackford, Brown, Cass, Dearborn, Decatur, DeKalb, Delaware, Elkhart, Fayette, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, Laporte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Morgan, Newton, Noble, Ohio, Porter, Pulaski, Randolph, Ripley, Rush, St. Joseph, Shelby, Starks, Steuben, Switzerland, Tipton, Union, Wabash, Wayne, Wells, White, and Whitley).	Indianapolis, Ind.
7th Indiana, (including the counties of Boone, Carroll, Clark, Clay, Clinton, Crawford, Daviess, Dubois, Floyd, Fountain, Gibson, Greene, Harrison, Knox, Martin, Montgomery, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Scott, Spencer, Sullivan, Tippecanoe, Vanderburg, Vermilion, Vigo, Warren, Warrick, and Washington).	Terre Haute, Ind.
3rd Iowa, (including the State of Iowa).	Dubuque, Ia.
Kansas,	Leavenworth, Kansas.

2nd Kentucky, (including the counties of Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, and Webster).	Owensboro, Ky.
5th Kentucky, (including the city of Louisville and the counties of Adair, Bullitt, Casey, Green, Harden, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Owen, Shelby, Spencer, Taylor, and Washington).	Louisville, Ky.
6th Kentucky, (including the counties of Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Harrison, Kenton, Pendleton, Robertson and Trible).	Covington, Ky.
7th Kentucky, (including the counties of Bath, Bourbon, Boyd, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Greenup, Johnson, Lawrence, Lewis, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Powell, Rowan, Scott, and Woodford).	Lexington, Ky.
8th Kentucky, (including the counties of Anderson, Bell, Boyle, Breathitt, Clay, Estill, Floyd, Garrard, Harlan, Jackson, Jessamine, Knott, Knox, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Mercer, Owsley, Perry, Pike, Pulaski, Rockcastle, Wayne, Whitley, and Wolfe).	Danville, Ky.
Louisiana,	New Orleans, La.
Maryland, (including the State of Delaware, and the District of Columbia).	Baltimore, Md.
Massachusetts,	Boston, Mass.
1st Michigan, (including the counties of Alcona, Alpena, Arenac, Bay, Branch, Calhoun, Cheboygan, Clare, Clinton, Crawford, Genesee, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Washtenaw, and Wayne).	Detroit, Mich.

4th Michigan, (including the counties of Alger, Allegan, Antrim, Baraga, Barry, Benzie, Berrien, Cass, Charlevoix, Chippewa, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Houghton, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Ontonagon, Osceola, Ottawa, St. Joseph, Schoolcraft, Van Buren, and Wexford).	Grand Rapids, Mich.
Minnesota,	St. Paul, Minn.
1st Missouri, (including the counties of Adair, Audrian, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Howard, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Montgomery, Monroe, New Madrid, Oregon, Osage, Penbiscot, Perry, Phelps, Pike, Pulaski, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne).	St. Louis, Mo.
6th Missouri, (including the counties of Andrew, Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, Dekalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Putnam, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright).	Kansas City, Mo.
Montana, (including the states of Utah and Idaho).	Salt Lake City, Utah.
Nebraska,	Omaha, Nebr.
New Hampshire, (including the states of Maine and Vermont).	Portsmouth, N. H.
1st New Jersey, (including the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem).	Camden, N. J.

5th New Jersey, (including the counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren).	Newark, N. J.
New Mexico, (including the State of Arizona).	Santa Fe, New Mexico.
1st New York, (including the counties of Kings, Nassau, Queens, Richmond, and Suffolk).	Brooklyn, N. Y.
2nd New York, (including the first, second, third, fourth, fifth, sixth, eighth, ninth, and fifteenth wards of New York City; that portion of the fourteenth ward lying west of the center of Mott Street; that portion of the sixteenth ward lying south of the center of West Twenty-fourth Street, and Governors Island).	New York, N. Y. Custom House.
3rd New York, (including the seventh, tenth, eleventh, twelfth, thirteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second wards of New York City; that part of the fourteenth ward lying east of the center of Mott Street; that part of the sixteenth ward lying north of the center of West Twenty-fourth Street and Blackwells, Randalls, and Wards Islands).	New York, N. Y. 167 Third Avenue.
14th New York, (including the counties of Albany, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester, and the twenty-third and twenty-fourth wards of New York City).	Albany, N. Y.
21st New York, (including the counties of Broome, Cayuga, Chenango, Cortland, Delaware, Franklin, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Tioga, Tompkins, and Wayne).	Syracuse, N. Y.
28th New York, (including the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wyoming, and Yates).	Rochester, N. Y.

4th North Carolina, (including the counties of Alamance, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Tyrell, Vance, Wake, Warren, Washington, Wayne, and Wilson).	Raleigh, N. C.
5th North Carolina, (including the counties of Alexander, Alleghany, Anson, Ashe, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mechlenberg, Mitchell, Polk, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey).	Statesville, N. C.
North and South Dakota,	Aberdeen, S. Dak.
1st Ohio, (including the counties of Brown, Butler, Clarke, Clermont, Clinton, Fayette, Greene, Hamilton, Highland, Montgomery, Preble, Miami, and Warren).	Cincinnati, O.
10th Ohio, (including the counties of Allen, Auglaize, Champaign, Crawford, Darke, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Logan, Lucas, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Shelby, Van Wert, Williams, Wood, and Wyandot).	Toledo, Ohio.
11th Ohio, (including the counties of Adams, Athens, Coshocton, Delaware, Fairfield, Franklin, Gallia, Guernsey, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Union, Vinton and Washington).	Columbus, O.

18th Ohio, (including the counties of Ashland, Ashtabula, Belmont, Carroll, Columbiana, Cuyahoga, Geauga, Harrison, Holmes, Jefferson, Lake, Lorain, Mahoning, Medina, Monroe, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne).	Cleveland, O.
Oklahoma,	Oklahoma, Okla.
Oregon,	Portland, Ore.
1st Pennsylvania, (including the counties of Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Philadelphia, and Schuylkill).	Philadelphia, Pa.
9th Pennsylvania, (including the counties of Adams, Bedford, Blair, Bradford, Cumberland, Carbon, Center, Clinton, Columbia, Dauphin, Franklin, Fulton, Huntington, Juniata, Lancaster, Lebanon, Lackawanna, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Pike, Potter, Perry, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, York, and Wyoming).	Lancaster, Pa.
23rd Pennsylvania, (including the counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford. Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland).	Pittsburgh, Pa.
South Carolina,	Columbia, S. C.
Tennessee,	Nashville, Tenn.
Texas,	Austin, Texas
2nd Virginia, (including the counties of Amelia, Appomatox, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Elizabeth City, Essex, Fluvanna, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Princess Anne, Richmond, Stafford, Southampton, Spottsylvania, Surry, Sussex, Warwick, Westmoreland, and York).	Richmond, Va.

6th Virginia, (including the counties of Albemarle, Alexandria, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Clarke, Craig, Culpeper, Dickenson, Fairfax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Loudoun, Madison, Mecklenburg, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe).	Abingdon, Va.
Washington, (including Alaska).	Tacoma, Wash.
West Virginia,	Parkersburg, W. Va.
1st Wisconsin, (including the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and county of Langlade with exception of the eight townships of said county which were formerly in Lincoln County).	Milwaukee, Wis.
2nd Wisconsin, (including the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Clarie, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, Wood, and the eight townships in the western part of Langlade County which were formerly in Lincoln County).	Madison, Wis.

(This is taken from the valuable pamphlet by Mr. Luther F. Speer, Deputy Commissioner of Internal Revenue.)

§ 58. **Contents of returns by individuals.** "On or before the first day of March, nineteen hundred and fourteen and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals; Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each

person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any such tax to be withheld prior to the first day of November, 1913. Provided further, That in either case above mentioned no return of income not exceeding $3,000 shall be required: Provided, further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: Provided, further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it." [1]

The Treasury Department has promulgated the following form and instructions for return by individuals of their income.

§ 58. [1] Act of October 3, 1913, II, subsection D.

TO BE FILLED IN BY COLLECTOR.

List No. .....

.....*District of* .....

Date received .....

FORM 1040.

INCOME TAX.

THE PENALTY
For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1, is $20 to $1,000.
(See instructions on page—infra.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

File No. .....

Assessment List .....

Page ..... *Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME OF INDIVIDUALS.

(As provided by Act of Congress approved October 3, 1913.)

Return of Net Income Received or Accrued During the Year Ended December 31, 191...
(For the Year 1913, From March 1, to December 31.)

Filed by (or for) ..... of .....
(Full name of individual.) (Street and No.)

in the City, Town, or Postoffice of ..... State of .....
(Fill in pages 2 and 3 before making entries below.)

1. Gross Income (see page 2, line 12)					$.....	.....	.....	.....
2. General Deductions (see page 3, line 7)					$.....	.....	.....	.....
3. Net Income					$.....	.....	.....	.....
Deductions and exemptions allowed in computing income subject to the normal tax of 1 per cent.								
4. Dividends and net earnings received or accrued, of corporations, etc., subject to like tax. (See page 2, line 11)	$.....	.....	.....	.....				
5. Amount of income on which the normal tax has been deducted and withheld at the source. (See page 2, line 9, column A)	.....	.....	.....	.....				
6. Specific exemption of $3,000 or $4,000, as the case may be. (See Instructions 3 and 19)	.....	.....	.....	.....				
Total deductions and exemptions. (Items 4, 5, and 6)					$.....	.....	.....	.....
7. Taxable Income on which the normal tax of 1 per cent is to be calculated. (See Instruction 3)					$.....	.....	.....	.....

8. When the net income shown above on line 3 exceeds $20,000, the additional tax thereon must be calculated as per schedule below:

	Income	Tax
1 per cent on amount over $20,000 and not exceeding $50,000	$.....	$.....
2 " " 50,000 " " 75,000	.....	.....
3 " " 75,000 " " 100,000	.....	.....
4 " " 100,000 " " 250,000	.....	.....
5 " " 250,000 " " 500,000	.....	.....
6 " " 500,000	.....	.....
Total additional or super tax		$.....
Total normal tax (1 per cent of amount entered on line 7)		$.....
Total tax liability		$.....

Page 2 of Form 1040.

GROSS INCOME.

This statement must show in the proper spaces the entire amount of gains, profits, and income received by or accrued to the individual from all sources during the year specified on page —.

Description of Income.	A. Amount of income on which tax has been deducted and withheld at the source.				B. Amount of income on which tax has **not** been deducted and withheld at the source.			
1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind in whatever form paid	$.....	.....	.....	.....	$.....	.....	.....	.....
2. Total amount derived from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, including bonds, stocks, etc.	.....	.....	.....	.....	.....	.....	.....	.....
3. Total amount derived from rents and from interest on notes, mortgages, and securities (other than reported on lines 5 and 6)	.....	.....	.....	.....	.....	.....	.....	.....
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not	.....	.....	.....	.....	.....	.....	.....	.....

5. Total amount of fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods.....	.....	.....	.....	.....	.....	.....	.....	.....
6. Total amount of income derived from coupons, checks, or bills of exchange for or in payment of interest upon bonds issued in **foreign countries** and upon **foreign mortgages** or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.....	.....	.....	.....	.....	.....	.....	.....	.....
7. Total amount of income received from fiduciaries.....	.....	.....	.....	.....	.....	.....	.....	.....
8. Total amount of income derived from any source whatever, not specified or entered elsewhere on this page.....	.....	.....	.....	.....	.....	.....	.....	.....
9. Totals.....	$.....	.....	.....	.....	$.....	.....	.....	.....
NOTE.—Enter total of Column A on line 5, page —.								
10. Aggregate Totals of Columns A and B.....					$.....	.....	.....	.....
11. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax..... (To be entered on line 4 of first page.)					$.....	.....	.....	.....
12. Total **"Gross Income"** (to be entered on line 1 of first page).....					$.....	.....	.....	.....

Page 3 of Form 1040.

GENERAL DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, but not including business expenses of partnerships, and not including personal, living, or family expenses	$....	.....	.....	.....
2. All interest paid within the year on personal indebtedness of taxpayer	.....	.....	.....	.....
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)	.....	.....	.....	.....
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise	.....	.....	.....	.....
5. Debts due which have been actually ascertained to be worthless and which have been charged off within the year	.....	.....	.....	.....
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made	.....	.....	.....	.....
7. Total "General Deductions" (to be entered on line 2 of first page)	.....	.....	.....	.....

AFFIDAVIT TO BE EXECUTED BY INDIVIDUAL MAKING HIS OWN RETURN.

I solemnly swear (or affirm) that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income received by or accrued to me during the year for which the return is made, and that I am entitled to all the deductions and exemptions entered or claimed therein, under the Federal Income-tax Law of October 3, 1913.

Sworn to and subscribed before me this .....

day of ....., 191

.....

SEAL OF OFFICER TAKING AFFIDAVIT .....

(Official capacity.)

.....

(Signature of individual.)

AFFIDAVIT TO BE EXECUTED BY DULY AUTHORIZED AGENT MAKING RETURN FOR INDIVIDUAL.

I solemnly swear (or affirm) that I have sufficient knowledge of the affairs and property of ..... to enable me to make a full and complete return thereof, and that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income received by or accrued to said individual during the year for which the return is made, and that the said individual is entitled, under the Federal Income-tax Law of October 3, 1913, to all the deductions and exemptions entered or claimed therein.

Sworn to and subscribed before me this .....

day of ....., 191

.....

SEAL OF OFFICER TAKING AFFIDAVIT .....

(Official capacity.)

.....

(Signature of agent.)

ADDRESS IN FULL. { .....
.....

(See instructions on next page.)

INSTRUCTIONS.

1. This return shall be made by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, having a *net income* of $3,000 or over for the taxable year, and *also* by every *nonresident alien* deriving income from property owned and business, trade, or profession carried on *in the United States* by him.

2. When an individual by reason of minority, sickness or other disability, or absence from the United States, is unable to make his own return, it may be made for him by his *duly authorized* representative.

3. The *normal tax* of 1 per cent shall be assessed on the total net income less the specific exemption of $3,000 or $4,000 as the case may be. (For the year 1913, the specific exemption allowable is $2,500 or $3,333.33, as the case may be.) If, however, the normal tax has been deducted and withheld on any part of the income at the source, or if any part of the income is received as dividends upon the stock or from the net earnings of any corporation, etc., which is taxable upon its net income, such income shall be deducted from the individual's total *net income* for the purpose of calculating the amount of income on which the individual is liable for the normal tax of 1 per cent by virtue of this return. (See page 1, line 7.)

4. The *additional or super tax* shall be calculated as stated on page 1.

5. This return shall be filed with the Collector of Internal Revenue for the district in which the individual resides if he has no other place of business, otherwise in the district in which he has his *principal place of business;* or in case the person resides in a foreign country, then with the collector for the district in which his principal business is carried on in the United States.[2]

6. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.[3]

7. The *penalty* for *failure to file the return within the time specified by law* is $20 to $1,000. In case of refusal or neglect to render the return within the required time (except in cases of sickness or absence), 50 per cent shall be added to amount of tax assessed. In case of *false or fraudulent return*, 100 per cent shall be added to such tax, and any person required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.[4]

8. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding

[2] *Supra*, § 57.
[3] *Supra*, § 56.
[4] *Infra*, § 64.

30 days from March 1, within which to file such return, *may be* granted by the collector, *provided* an application therefor is made by the individual within the period for which such extension is desired.[5]

9. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer *authorized by law* to administer oaths. If before a justice of the peace or magistrate, not using a seal, *a certificate of the clerk of the court as to the authority* of such officer to administer oaths should be *attached to the return.*

10. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, *are not expenses that can be deducted from gross income.* In case an individual owns his own residence he cannot deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.[6]

11. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.[7]

When animals were raised by the owner and are sold or slaughtered he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The case of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.[8]

12. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return can be deducted.[9]

13. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.[10]

14. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall

[5] *Supra*, § 56.
[6] *Supra*, § 43.
[7] *Supra*, §§ 35, 41.
[8] *Supra*, § 42.
[9] *Supra*, § 47.
[10] *Supra*, §§ 37–39.

subsequently prove to be worthless, they may be deducted under the head of losses in the return for the year in which such debts were charged off as worthless.[11]

15. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.[12]

16. United States pensions shall be included as income.

17. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.[13]

18. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

19. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of $3,000. When husband and wife live together they shall be allowed jointly a total exemption of only $4,000 on their aggregate income. They may make a joint return, both subscribing thereto, or if they have separate incomes, they may make separate returns; but in no case shall they jointly claim more than $4,000 exemption on their aggregate income.[14]

20. In computing net income there shall be excluded the compensation

[11] But see *supra*, § 47.

[12] *Supra*, § 54.

Partnerships are not subject *as partnerships* to the income tax and are required to make statements of their income and earnings as partnerships only when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business, and when such a statement is required, as aforesaid, the said statement shall give a complete and correct report of the gross income of the said partnership and also a complete account of the actual legitimate annual expenses of conducting the business of said partnership (not including living and personal expenses of the partners) and the net profits and the name and address of each of the members of said partnership and their respective interest in the net profits thus reported.

The net annual income of a partnership when apportioned and paid to the members thereof, shall be returned by each individual partner receiving same, in his annual return of net income, and the tax shall be paid thereon by said individual partner, as required by law.

When the annual income of a partnership is not distributed and paid to the members thereof, the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as part of their gross income, the same as if said profits had been distributed and paid to them.

Undivided annual net income of partnerships thus returned by the individual members thereof, upon which the tax shall have been paid, shall not, when said profits are actually distributed and paid to the partners, be again included in their annual return as a part of their gross income. 4 S. T. D. 1905, Nov. 28, 1913.

[13] *Supra*, §§ 41, 45.

[14] *Supra*, § 51.

"Every single person, and every married person not living with husband or wife in the sense below defined, who has a net income exceeding $3,000 per annum, is liable to pay the normal income tax under this law, but in making return for

of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.[15]

The oath, if administered without the United States, may be taken before any secretary of legation or consular officer at the post, port, place, or within the limits of his legation, consulate or commercial agency.[16]

such tax may claim an exemption of $3,000 for their total net income.

"Husband and wife living together are entitled to an exemption of $4,000 only from the aggregate net income of both, which may be deducted in making the return of such aggregate income for taxation. However, when the husband and wife are separated and living permanently apart from each other, each shall be entitled to the exemption of $3,000.

"If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each, and the full name and address of both must be shown in such return.

"The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

"If a wife has a separate estate managed by herself as her own separate property and receives an income of more than $3,000, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000.

If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than $4,000.

"If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately has an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

"The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year.

"These regulations hereby supersede the regulations relative to paragraph C of the Income Tax law, as prescribed on page 4 of Regulations, part 2, issued under date of October 31, 1913."

T. D. 1923, Dec. 27, 1913.

[15] *Supra*, § 39.

[16] U. S. R. S. § 1750.

§ 58a. **Contents of Returns by Fiduciary Agents.** The Treasury Regulations provide: "Said fiduciaries shall, on or before March 1 of each year, when the annual interest of any beneficiary in said income is in excess of $3,000, make and render a return of the income of the person or persons for whom they act to the collector of internal revenue of the district in which the fiduciary resides. This return shall give an itemized statement of the gross income and deductions claimed and shall be in the same form as prescribed for annual return made by individuals. Said fiduciary acts for, and in behalf of, the beneficiaries of said trust; and the annual return required as above in behalf of said beneficiaries has reference only to the income accruing and payable through said fiduciary, and not the income of said beneficiaries from other sources, unless the said fiduciary is legally authorized to act for said beneficiaries in their individual capacity, in which case said fiduciary, acting as duly authorized agent of the individual, shall also make the personal annual return as provided by law. There shall accompany the annual return of said fiduciary a list giving the name and full address of each beneficiary and the share of said income to which each may be entitled."

The Treasury Regulations further provide:

"Fiduciary agents, in addition to the annual return of income required by these regulations, shall make an annual list return, as provided by regulations for withholding agents, whenever payments of income to any beneficiary is in excess of $3,000. Said list return shall be made on or before March 1 of each year to the collector of internal revenue for the district in which said fiduciary resides or has his principal place of business, giving name and address of each beneficiary of said trust, to whom annual income in excess of $3,000 is paid, the amount of income paid to each beneficiary, giving source of income, the amount of exemption claimed by each beneficiary, if any, and the amount of income withheld for tax, and the said list return shall be signed by the fiduciary making same, stating in what capacity acting, and give his name and full address. Fiduciaries having an annual income that is not distributed or paid to the beneficiaries of the trust under which said fiduciary acts shall make an annual list return, as provided herein, and said list return shall show the name and address of each beneficiary

having a distributive interest in said income in excess of $3,000, stating the distributive amount of each beneficiary, and shall give all information as required in said list returns, and shall withhold and pay to the collector, as provided by law, the normal tax of 1 per cent. upon the distributive interest of each of said beneficiaries in excess of $3,000. the same as if said income was actually distributed and paid; exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent. When the fiduciary agents deduct, withhold and pay the normal tax on undivided annual net income as provided herein they shall not be required to withhold and pay again the normal tax on said income when actually distributed and paid to said beneficiaries, nor shall the beneficiaries be required again to pay the normal tax upon the amounts on which the tax has been paid when such amounts are distributed. Where the normal tax is withheld and paid by fiduciary agents on undivided annual income beneficiaries (or their legal representatives) in whose behalf said tax is paid may file notice with said fiduciary and claim the benefit of any annual exemption they may be entitled to under paragraph C of the act of October 3, 1913, as provided by regulations, the same as if their distributive interest in same income was actually paid." [2]

When the fiduciary files a certificate making no personal claim for exemption,[3] the debtor is the source which withholds the normal tax, and the fiduciary after the deduction by the debtor is not required again to deduct the same.[4]

Form No. 1041 is to be used by fiduciaries in making returns of annual net income in behalf of their beneficiaries and as withholding agents.

§ 58*a*. [1] T. D. November 28, 1913.

[2] T. D. November 28, 1913. See *infra*, §§ 70, 77.

[3] The form of the certificate is contained in § 77, note 1, *infra*.

[4] T. D. November 28 and December 9, 1913.

TO BE FILLED IN BY COLLECTOR.

List No. .....

.....*District of* .....

Date received .....

FORM 1041.

INCOME TAX.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1 is $20 to $1,000.

(See instructions on page 4.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

File No. .....

Assessment List .....

Page ..... *Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL INCOME BY FIDUCIARIES.

(As provided by Act of Congress approved October 3, 1913.)

Return of Income Received or Accrued During the Year Ended December 31, 191...

(For the Year 1913, from March 1, to December 31.)

Filed by ....., acting in the capacity of

(Name of fiduciary.)

....., for the beneficiaries of the estate or trust of .....

(State whether trustee, executor, etc.)

.....

(Fill in pages 2 and 3 before making entries on this page.)

1. Gross Income (see page 2, line 11)	$.....	.....	.....	.....
2. Total Deductions (see page 3, line 9)	$.....	.....	.....	.....
3. Amount of income paid or payable to beneficiaries on which the normal tax of 1 per cent has been deducted and withheld as listed below	$.....	.....	.....	.....

Names of beneficiaries.	Addresses.	Amount of income paid or accrued to beneficiaries.	Amount of exemption claimed.	Amount of income on which fiduciary is liable for tax.	Amount of tax withheld.
		$	$	$	$
Totals		$	$	$	$

Page 2 of Form 1041.

GROSS INCOME.

This statement must show in the proper spaces the entire amount of gains, profits, and income coming into the custody or control and management of the fiduciary, for the benefit of the beneficiaries of the trust or estate, during the year specified on page 1.

DESCRIPTION OF INCOME.	A. Amount of income on which tax has been deducted and withheld at the source.	B. Amount of income on which tax has **not** been deducted and withheld at the source.
1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid	$.....	$.....
2. Total amount derived from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, including bonds, stocks, etc.	.....	.....
3. Total amount derived from rents and from interest on notes, mortgages, and securities (other than reported on lines 5 and 6)	.....	.....
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not	.....	.....
5. Total amount of fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods	.....	.....

6. Total amount of income derived from coupons, checks, or bills of exchange for or in payment of interest upon bonds issued in *foreign countries* and upon *foreign mortgages* or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries.....								
7. Total amount of income derived from any source whatever, not specified or entered elsewhere on this page.....								
8. Totals	$.....				$.....			
NOTE.—Enter total of Column A on line 8 of third page.								
9. Aggregate Totals of Columns A and B.....					$.....			
10. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax					$.....			
(To be entered on line 7 of third page.)								
11. Aggregate Total of "**Gross Income**" (to be entered on line 1 of first page).....					$.....			

Page 3 of Form 1041.

DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, but not including business expenses of partnerships, and not including personal, living, or family expenses	$.....	.....	.....	.....
2. All interest paid within the year on personal indebtedness of taxpayer	.....	.....	.....	.....
3. All United States, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits).....	.....	.....	.....	.....
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise	.....	.....	.....	.....
5. Debts due which have been actually ascertained to be worthless and which have been charged off within the year	.....	.....	.....	.....
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made.....	.....	.....	.....	.....
7. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax (same as entry on line 10, page 2).....	.....	.....	.....	.....
8. Amount of income on which the normal tax of 1 per cent has been deducted and withheld at the source (see page 2, line 8, column A).....				
9. Total deductions (to be entered on line 2 of first page)....	$.....	.....	.....	.....

AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN INDIVIDUAL.

I solemnly swear (or affirm) that I am the.....for the beneficiaries of the estate or
(State whether trustee, executor, etc.)

trust of.....; that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income coming into my custody or control and management during the year for which the return is made; that said beneficiaries are entitled, under the Federal Income-tax Law of October 3, 1913, to all the deductions entered or claimed therein; that all certificates claiming personal exemption, presented by the beneficiaries, are herewith inclosed; and there is contained therein a true and complete list of the names and addresses of all beneficiaries to whom any part of the amount stated on line 3 of the first page thereof has been paid or is payable.

Sworn to and subscribed before me this..... .....
(Signature of fiduciary.)

day of....., 191

Seal of Officer Taking Affidavit. ....

Address in full. ....

AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN ORGANIZATION.

I solemnly swear (or affirm) that I am the.....of the.....
(State official position.) (State name of fiduciary organization.)

of....., which organization is the duly authorized or appointed.....
(Address in full.) (State whether trustee, executor, etc.)

for the beneficiaries of the estate or trust of.....; that I am duly authorized to act for said fiduciary; that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income coming into the custody or control and management of said organization in its fiduciary capacity as stated during the year for which the return is made; that said beneficiaries are en-

titled under the Federal Income-tax Law of October 3, 1913, to all the deductions entered or claimed therein; that all certificates claiming personal exemption, presented by the beneficiaries, are herewith inclosed; and there is contained therein a true and complete list of the names and addresses of all beneficiaries to whom any part of the amount stated on line 3 of the first page thereof has been paid or is payable.

Sworn to and subscribed before me this..... .....

(Signature of officer representing fiduciary.)

day of....., 191

Seal of Officer Taking Affidavit. .....

.....

Address in full. .....

.....

Page 4 of Form 1041.

INSTRUCTIONS.

1. Fiduciaries shall, when the annual interest of any beneficiary in income accruing and payable through said fiduciary is in excess of $3,000, make and render a return on this form of such income of the person or persons for whom they act, to the Collector of Internal Revenue of the district in which the fiduciary resides. The return shall be made as provided herein, whether the income is distributed or not. See Treasury Decision 1906.

2. The list return required from fiduciaries by regulations provided in Treasury Decision 1906, issued November 28, 1913, shall be made on page 1 of this return, giving thereon the name of each beneficiary of the trust or estate, the amount of income paid or accrued to each beneficiary, the amount of exemption claimed by each beneficiary, if any, the amount of income on which fiduciary is liable for tax, and the amount of income withheld for tax.

3. Where several individuals act jointly in a fiduciary capacity, when this return is required it may be made and executed by one of two or more. When the fiduciary is an organization it shall be signed and executed by the President, Secretary, or Treasurer of said organization.

4. This return shall be filed with the Collector of Internal Revenue for the district in which the fiduciary resides if he has no other place of business, otherwise in the district in which he has his principle place of business.

5. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.

6. The penalty for failure to file the return within the time specified by law is $20 to $1,000. In case of refusal or neglect to render the return within the required time (except in case of sickness or absence) 50 per cent shall be added to amount of tax assessed. **In case of false or fraudulent return 100 per cent shall be added to such tax and a fine not exceeding $2,000 or imprisonment not exceeding one year or both may be imposed.**

7. When the return is not filed within the required time by reason of sickness or absence of the fiduciary, an extension of time not exceeding 30 days from March 1, within which to file such return may be granted by the Collector, provided an application therefor is made by the fiduciary within the period for which such extension is desired.

8. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a justice of the peace or magistrate, not using

a seal, a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return.

The following instructions, so far as applicable, are to be considered by the fiduciary in determining the amount of income coming into his custody or control and management which should be reported in this return on page 2, and the deductions which should be reported on page 3.

9. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income. In case an individual owns his own residence he can not deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.

10. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.

When animals are raised by the owner and are sold or slaughtered, he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.

11. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return, can be deducted.

12. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which the return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.

13. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts due to the taxpayer and contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall subsequently prove to be worthless, they may be deducted un-

der the head of losses in the return for the year in which such debts were charged off as worthless.

14. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.

15. United States pensions shall be included as income.

16. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.

17. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

18. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of $3,000. When husband and wife live together they shall be allowed jointly a total exemption of only $4,000 on their aggregate income.

19. In computing net income there should be excluded the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

§ 59. Contents of returns of income payable at the source. When the income is payable at the source, the regulations of the Department require that the following certificate be filed by the persons, firms or organizations required to pay the same at the source:

Form of Certificate to be filed by persons, firms, or organizations required to withhold and pay said tax other than the Debtor at the source.

To: ....., *Collector of Internal Revenue,*
(Name of collector of internal revenue.)

.....
(Give address and designate district.)

I, ..., ...
(Name.) (Official title, if any.)

of the ....., ...
(Person, firm, or organization.) (Capacity in which acting.)

of ....., do solemnly declare that I (we)
(Post-office address.)

received of ..... $....., same being
(Name from whom received.)

income derived from .....
(State source, whether rents, salary, or other sources.)

belonging to ....., ...
(Give name of person to whom income is due.) (Address.)

and that the tax thereon amounting to $....., to which said person is subject, has been withheld at the source of said income by

....., ...
(Name of person withholding.) (Post-office address.)

(Signed) .....

Address.....
(Street and number.)

.....
(City and State.)

Date: ....., 191—.

When a person, the normal tax upon whose income is payable at the source, wishes to avail himself of the exemption of $3,000 or $4,000, as the case may be, he must file with the payer at the source, not later than thirty days before the day on which the return is due, a notice in the following form:

Form for claiming exemption at the source as provided in paragraph C, section 2, of the Federal income-tax law of October 3, 1913.

To .....
(Give name of withholding agent.)

.....
(Post-office address.)

I hereby serve you with notice that I ..... am *single—married and living with my wife—husband*, and now claim the
(Strike out so as to show status correctly.)
benefit of the exemption of $....., as allowed in paragraphs C and D of section 2 of the Federal income-tax law of October 3, 1913 (my total exemption under said paragraphs being $.....).

Signed: .....,

Address: .....,
(Street and number.)

.....
(City and State.)

Date: ....., 191...

If the person subject to the tax wishes to avail himself of the other deductions, he should file the following form with such payer at the source:

Form No. ———.

UNITED STATES INTERNAL REVENUE.

Return making application for deductions, as provided by paragraphs B and E, section 2 of the Federal income-tax law of October 3, 1913.

To .....
(Name of withholding agent.)

.....
(Street and number.)

....
(Town or city.) (State.)

I hereby solemnly declare that the following is a true and correct return of my gains, profits, and income from all other sources for the calendar year ended December 31, 191— (from March 1 to December 31 for the year 1913), and a true and correct return of deductions asked for under paragraph B of section 2 of the act of October 3, 1913, and I hereby claim deductions as shown below.

Amount of gains, profits, interest, rents, royalties, profits from co-partnerships, and income from all other sources whatsoever ..... $.....

DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, except business expenses of partnerships, and not including personal, living, or family expenses ..... $.....

2. All interest paid within the year on personal indebtedness of taxpayer ..... $.....
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits) ..... $.....
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise ..... $.....
5. Debts due, which have been actually ascertained to be worthless and charged off within the year $.....
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed in the case of mines 5 per cent of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made ..... $.....
7. The amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income $.....
8. The amount of income, the tax upon which has been paid or withheld for payment at the source of income ..... $.....

$.....

Total deductions ..... $.....

Date..... ....., 191.. (Signed).....

Address.....

.....

NOTE.—Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law.

"Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law." [3]

When the person subject to the normal tax is a minor, or insane, or absent from the United States, or unable because of serious illness to make the application or return, such return or application may be made by the withholding agent, who

should make the following oath under the penalties of the act:

Form of oath required of a withholding agent when acting for another in filing return and making application for deductions allowable under paragraph B, as provided in paragraph E, section 2, of the Federal income-tax law of October 3, 1913.

I hereby swear (or affirm) that I have sufficient knowledge of the affairs and property of ..... to enable me to
(Naming person and address for whom acting.)
make a full and complete return for ....., and that the return
(Naming person.)
of income and application for deductions made by me are true and accurate.

(Signed) .....
Address.....
(Street and number.)
.....
(City and State.)

Date: ....., 191—.
Signed and sworn to before ....., 191—.
.....

Withholders of income at the source are required to file monthly and yearly list returns of the amount of normal income tax thus withheld. The ordinary form of the monthly return is number 1012, which is printed without that designation on a subsequent page.[1]

[1] *Infra*, p. 249g.

FORM 1012 D.

Form 1012d, when necessary to be used, shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent, and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same as fully as if each list attached to the summary was signed and sworn to separately.

UNITED STATES INTERNAL REVENUE.

SUMMARY OF MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX WITHHELD AT THE SOURCE.

Filed by .....
(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the withholding agent is located, on or before the 20th day of each month, showing the name and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we) ....., of ....., the duly
(Name.) (State address in full.)

authorized withholding agent of ....., located at .....
(State name of debtor organization.) (Address in full.)

....., do solemnly swear (or affirm) that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the

month of ....., 191... on bonds (or other similar obligations) of the .....
(Name of debtor organization.)
....., as fully set forth in detail, on lists attached hereto, said lists, Form 1012, and this Summary, constituting the Monthly List Return of Normal Income Tax Withheld at the Source as required by the regulations; and that there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described and that said withholding agent has paid no coupons or orders for registered interest not accompanied by the certificates of ownership as required by Treasury Regulations.

Description of Obligation.	Amount of Income.	Amount of Exemption Claimed.	Amount of Income on which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.
.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Totals for month	$.....	$.....	$.....	$.....

Amount of tax remitted herewith (if any) to Collector ..... $.....

To ..... Collector.
..... District of .....
.....
(Address.)

Sworn to and subscribed before me this
..... day of ....., 191..
.....

Signed:
.....
.....
(Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents, will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

(Form 1013.)

United States Internal Revenue.—Annual list return of amount of normal income tax withheld at the source. From interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, or associations, and insurance companies.

Filed by .....

(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before March 1, showing the totals of each monthly return on Form 1012 and their aggregate totals for the preceding calendar year.

I (we) ..... of .....

(Name.) (State address in full.)

the duly authorized withholding agent of .....

(State name of debtor organization.)

located at .....

(State address in full.)

do solemnly swear (or affirm) that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization or for which it is liable as withholding agent as reported on Form 1012 and their aggregate totals for the year ended December 31, 191....:

Month	Amount of income	Amount of exemption claimed	Amount of income on which withholding agent is liable for tax	Amount of tax withheld	Amount of tax remitted to collector	Balance of tax due
January	$.....	$.....	$.....	$.....	$.....	$.....
February	.....	.....	.....	.....	.....	.....
March	.....	.....	.....	.....	.....	.....
April	.....	.....	.....	.....	.....	.....
May	.....	.....	.....	.....	.....	.....
June	.....	.....	.....	.....	.....	.....
July	.....	.....	.....	.....	.....	.....
August	.....	.....	.....	.....	.....	.....
September	.....	.....	.....	.....	.....	.....
October	.....	.....	.....	.....	.....	.....
November	.....	.....	.....	.....	.....	.....
December	.....	.....	.....	.....	.....	.....
Aggregate total for year	.....	.....	.....	.....	.....	.....

To .....
(Collector.)
..... district of .....
.....
(Address.)

Sworn to and subscribed before me this .....
day of .....191—...
.....

Signed:
.....
.....
(Capacity in which acting.)

Form No. 1043 is a monthly list return of taxes withheld on foreign income by licensed banks or collecting agents.

Form 1043

UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX WITHHELD ON FOREIGN INCOME BY LICENSED BANKS OR COLLECTING AGENCIES.

Filed by ..... License No. .....
(Name of bank or collecting agency.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the licensee is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments from coupons, checks, or bills of exchange representing interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations (not payable in the United States), or dividends upon the stock or interest upon the obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we), ..., of .....
(Name.) (State address in full.)

the ..... of the above-named bank or collecting agency located at .....
(Official position.) (Address in full.)

do solemnly swear (or affirm) that the following is a true and complete return of all payments as above described, made by said bank or collecting agency, and from which the normal tax of 1 per cent was deducted and withheld at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191 , and there are herewith inclosed all certificates claiming exemption which were presented with said coupons, checks, etc.

Name.	Address in Full.	Character of Income. (See note C.)	Amount of Income.	Amount of Exemption Claimed.	Amount of Income on which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.
.....	.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
Totals for month			$.....	$.....	$.....	$.....
Amount of tax remitted herewith (if any) to Collector						$.....

To ..... *Collector.*
.....District of.....
.....
(Address.)

Sworn to and subscribed before me this
.....day of....., 191
.....

Signed:
.....
.....
(Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Note C.—Enter "Int. on Bonds." "Int. on Mortg.," "Dividends," etc., as the case may be.

Form No. 1044 is a monthly list return of taxes withheld by the first bank or collecting agency receiving coupons or interest orders not accompanied by certificates of owners.

Form 1044.

UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX WITHHELD BY FIRST BANK OR COLLECTING AGENCY.

Receiving Coupons and Interest Orders Not Accompanied by Certificates of Owners.

Filed by .....
(Name of bank or collecting agency.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the collecting agency is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month, the coupon and interest orders for said payments having been presented without certificates of owners.

I (we) ....., of .....
(Name.) (State address in full.)
the ....., of ....., located at .....
(Official position.) (Name of bank or collecting agency.) (Address in full.)
do solemnly swear (or affirm) that the following is a true and complete return of all coupon and interest orders purchased or accepted for collection as above described during the month of ....., 191 , and the said bank or collecting agency, having acknowledged its responsibility of withholding therefrom the normal tax of 1 per cent, has deducted and withheld the tax as listed below, in accordance with the regulations of the Treasury Department.

....
(Describe the particular issue of bonds.) (State name and address of debtor organization.)

Name.	Address in Full.	Amount of Income Subject to Tax.	Amount of Tax Withheld.
.....	.....	$.....	$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Totals for month		$.....	$.....
Amount of tax remitted herewith (if any) to Collector			$.....

To .....
Collector.
..... District of .....
.....
(Address.)

Sworn to and subscribed before me this
..... day of ....., 191
.....

Signed:
.....
.....
(Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

The Treasury Department has since promulgated the following additional returns. These forms have not yet been issued, although they have been approved. They are as follows:

Form No. 1042 is the annual list return of withholding agents of taxes withheld by them on income other than that derived from corporate obligations.

Form No. 1043-A is the annual list return to be made by licensed banks and collecting agents of taxes withheld by them during the year on foreign items.

Form No. 1044-A is the annual list return of taxes withheld during the year by the first bank or collecting agency receiving coupons or interest orders not accompanied by certificates of owners.

Form No. 23-A will be used by collectors in listing, for assessment, the corporations showing net income upon which the tax is to be computed, this form to be prepared in duplicate.

Form No. 23-B will be used by collectors in listing, for assessment, withholding agents, fiduciaries, etc., and individuals who return a taxable income.

The following supplemental regulations are here inserted for convenience, since they were issued after chapter VII., to which they more properly belong, was in type:

(T. D. 1915.)

Income tax.

Supplemental regulations prescribing forms of certificates to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 5, 1913.

Subject to the provisions of the Regulations in Treasury Decision 1903, dated November 28, 1913, collecting agents may substitute Form 1000*a*, properly filled in and numbered, for the certificate of the owner on Form 1000.

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1001, said substitute certificate shall be in substantially the following form:

(Form 1001a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When owner is a domestic organization not subject to taxes on income at source.)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due ...., 191.....,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1001, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., 191..,"
(Name of collecting agency.) (Date.)
and that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191..., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent,.....

Date, ..., 191... Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1003, said substitute certificate shall be in substantially the following form:

(Form 1003a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(When said owners are firms or copartnerships in the United States).

The owner's certificate, of which the following certificate is the counterpart and bears the same number as this certificate, will be sent by the col-

lecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No.....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$....., bonds of the ....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due ...., 191..,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, form No. 1003, which certificate has been indorsed by me (us) as follows: "Owner's certificate No....., ..., ...,
(Name of collecting agency.) (Date.)
191...," and that the name and address of the firm or partnership, and the names of the individual members thereof, and their places of residence was recorded on said original certificate, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate, executed by the owners as stated, and dated ....., 191..., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1004, said substitute certificate shall be in substantially the following form:

(Form 1004a.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners. (When owners are both citizens or subjects and residents of foreign countries).

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ....., from which were
(Name of debtor organization.)
detached the accompanying interest coupons due ....., 191 ...,
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1004, which certificate has been indorsed by me (us) as follows: "Owner's certificate No....., ..., ...,
(Name of collecting agency.) (Date.)
191...," and that the owner in said certificate declares that being a non-resident foreigner, said interest is exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever resid-

ing, or foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons, or interest, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.... to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address .....

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1011, said substitute certificate shall be in substantially the following form:

(Form 1011*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*When owners are firms or copartnerships in the United States claiming deduction for tax on account of operating expenses incurred.*)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) .....do solemnly declare that the owner
(Name of collecting agent.)
of $..... bonds of the ..... from which were de-
(Name of debtor organization.
tached the accompanying interest coupons due ....., 191—, amount-
(Maturity.)
ing to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1011, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191—,"
(Name of collecting agency.) (Date.)
and the partnership in said certificate did claim a deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and did solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191—. Address, ...

When collecting agents substitute their own certificate in lieu

of owner's certificate on Form 1014, said substitute certificate shall be in substantially the following form:

(Form 1014*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*When owners are firms or copartnerships of foreign countries and claim immunity from income tax.*)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we), ..., do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ....., from which were detached the accompanying interest coupons due ....., 191—,
(Name of debtor organization.)
(Maturity.)
amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1014, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ...,
(Name of collecting agency.) (Date.)
191—," and that said certificates declare that said owners are a copartnership and that all the members of the firm or partnership, except partners whose names are recorded thereon, are nonresident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ... 191—. Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1015, said substitute certificate shall be in substantially the following form:

(Form 1015*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*When owners are fiduciaries.*)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the

collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by Regulations.

No. .....

I (we), ..., do solemnly declare that the owner
(Name of collecting agent.)
of $ ..... bonds of the .....from which were de-
(Name of debtor organization.)
tached the accompanying interest coupons due ....., 191—, amount-
(Maturity.)
ing to $ ....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 29, 1913, Form. *No.* 1015, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., 191—,"
(Name of collecting agency.) (Date.)
that said certificate is executed by a fiduciary, and that the fiduciary acting for and in the capacity as stated therein, assumes the duty and responsibility imposed upon withholding agents under the law, of withholding and paying the income tax due, for which he (it) may be liable, and that acting in said fiduciary capacity as stated therein, he (it) did claim exemption from having the normal tax withheld from said income, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue, at Washington D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191—. Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1016, said substitute certificate shall be in substantially the following form:

(Form 1016*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*Owners being foreign organizations not subject to the income tax at the source.*)

The owner's certificate, of which the following certificate is the counterpart and bears the same number as this certificate, will be sent by the collecting agent direct to the commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$ ..... bonds of the ....., from
(Name of debtor organization.)
which were detached the accompanying interest coupons due .....
(Maturity.)
191—, amounting to $....., has filed with me(us) a duty executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form *No.* 1016, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....
(Name of collecting agency.)
....., 191—," and that under the provisions of the income-
(Date.)

tax law of October 3, 1913, the said organization in said certificate declares that it is a foreign organization, and that the said interest or income is exempt from the payment of taxes collectible at the source, which exemption it claims, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1018, said substitute certificate shall be in substantially the following form:

(Form 1018*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(Owners being foreign organizations engaged in business in the United States and subjet to tax.)

The owner's certificate, of which the following certificate is the counterpart and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$ ... . bonds of the ....., from
(Name of debtor organization.)
which were detached the accompanying interest coupons due .....
(Maturity.)
191—. amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of December 5, 1913, Form *No.* 1018. which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....
(Name of collecting agency.)
....., 191—," and that under the regulations made in pursuance
(Date.)
of section 2, act of October 3, 1913, said organization is subject to the normal tax of one per cent per annum upon the amount of net income accruing from business transacted and capital invested with the United States, and did therein claim exemption from having the said tax withheld at the source from said income, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate, executed by the owners as stated, and dated ....., 191—, to the Commissioner of Internal Revenue at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

All of the forms prescribed herein to be used by collecting agents for substitution in lieu of the owner's certificate, accompanying coupons to be presented for collection, shall be subject to all of the provisions of the regulations as published in Treasury Decision 1903 of November 28, 1913, the same as the said regulations are made to apply to Form 1000*a*, as given therein."

(T. D. 1929.)

INCOME TAX.

Supplemental regulations prescribing form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners, when said owners are fiduciaries not claiming exemption at source.

TREASURY DEPARTMENT,
Office of Commissioner of Internal Revenue,
Washington, D. C.,
January 3, 1914.

Subject to the provisions of the Regulations in Treasury Decision 1903, dated November 28, 1913, collecting agents may substitute Form 1019a, properly filled in and numbered, for the certificate of the owner on Form 1019. When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1019, said substitute certificate shall be in substantially the following form:

(Form 1019*a*.)

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owners.

(*When owners are fiduciaries.*)

The owner's certificate, of which the following certificate is the counterpart and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$ ..... bonds of the ....., from
(Name of debtor organization.)
which were detached the accompanying interest coupons due .....
(Maturity.)
191—, amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of December

8, 1913, Form No. 1019, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. .....
.....
(Name of collecting agency.)
191—," that said certificate is executed by a fiduciary, and that the fidu-
(Date.)
ciary, acting for and in the capacity as stated therein, did not claim any exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source; and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date, ..., 191... Address, ...

W. H. OSBORN,
Commissioner.

APPROVED:
W. G. McADOO,
Secretary.

§ 60. Contents of returns by corporation, joint-stock company, or association. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign

country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:

Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposit; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invest-

ed within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized." [1]

The following forms have been issued for returns by corporations of their own income. The forms of their returns of income payable by them at its source are contained in the preceding section.

§ 60. [1] Act of Oct. 3, 1913, II. subsection G (c).

TO BE FILLED IN BY COLLECTORS.

List No. ..... *Class* .....

.....*District of* .....

Date received ....., 191

FORM 1030.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

Page .....*Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

INSURANCE COMPANIES.

Return of Net Income received during the calendar (fiscal) year ended ....., 191

by .....

the principal place of business of which is located at .....
(Street and No.)

City or Town of ....., in the State of .....,
(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding, or, if no capital stock the capital employed in business, at the close of the year above stated. (See Note 8 on p. —, infra) $.....

2. Total amount of bonded and other indebtedness outstanding at close of year. (See Note 9) .. $.....

3. GROSS INCOME (see Note A, and instructions, paragraphs 10, 18, 21, 22, 23, 25, and 26) .... $.....

DEDUCTIONS.

4. (*a*) Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation EXCLUSIVE OF INTEREST PAYMENTS. (See Note B) ..... $.....

(*b*) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See Note 12 on p. —, infra) ..... $.....

5. (*a*) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(*b*) Total amount of depreciation for the year. (See Note 13) . $.....

(*c*) Total amount (other than dividends) paid within the year on policy and annuity contracts ..... $.....

(*d*) Total amount of net addition required by law to be made within the year to reserve fund. (See Note 28) ..... $.....

(*e*) Amounts of premiums repaid to policy holders and interest paid thereon (applicable only to Mutual Marine Insurance companies) ..... $.....

6. (*a*) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year ..... $.....

(*b*) Total amount of interest received upon obligations of a State or political subdivision thereof and upon the obligations of the United States or its possessions ..... $.....

7. (*a*) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof. (See Note 20) ..... $.....

(*b*) Foreign taxes paid ..... $.....

TOTAL DEDUCTIONS ..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

STATE OF ....., *County of* ....., TO WIT:

....., President, and ....., Treasurer of the ..... a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, including interest upon obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, without any deduction whatsoever, received from all sources by the said corporation during the

year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed under the terms of the Federal Income Tax Law of October 3, 1913.

SWORN AND SUBSCRIBED to before me this .....

day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

.....
(Official capacity.)

Note A.—Gross income of insurance companies shall consist of the total of the gross revenues derived from the operation and management of their businesses and properties, together with all amounts of income from other sources, including dividends on stock of other organizations, whether subject to this tax or not, premiums, interest, rentals, and all items of income resulting from appraisement or adjustment, and shown by entries upon the books during the year for which the return is made.

Mutual marine insurance companies may exclude from the gross premiums collected the "amounts paid for reinsurance," including the remainder in gross income.

Mutual fire insurance companies may omit from gross income "any portion of the premium deposits returned to their policyholders."

Life insurance companies may also omit from their gross income "such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such policyholder, or treated as an abatement of premium of such individual policyholder within the year." The amount thus omitted shall include only such dividends or premiums returned or applied as represent a portion of the actual premium received from any individual policyholder.

Note B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year.

Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account are not proper deductions in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4 if the interest is paid as rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b).

(See paragraph 12 on reverse of this form.)

INSTRUCTIONS.

Reverse of Form 1030.

Especial Notice. — This form [1030], properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. Return of annual net income of corporations should be made on forms prescribed by the Treasury Department and should be filed with the Collector of Internal Revenue of the district in which such corporations have their principal places of business.

2. Before transmitting such returns to the collectors they must be verified by two officers of the corporation; that is, by two individuals, each holding a different official title, namely: the President, Vice President, or other principal officer, *and* its Treasurer or Assistant Treasurer, or Chief Financial Officer.

3. The affidavit of verification must be made before a Notary Public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

4. Under the provisions of the law, the return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

5. If the return is based upon the business transacted during the *calendar year*, it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, or consecutive twelve months period other than the calendar year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

6. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding thirty days from the date when such return is otherwise due. Application for such extension must be made prior to the date when the return is due.

7. The principal place of business as used in the act and in these regulations is held to mean the place or office in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

8. Item No. 1 of the schedule on the reverse side of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received, or in case no stock

is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation.

In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year, resulting from business transacted and capital invested within the United States.

11. Item No. 4 (*a*) should include the total amount of all ordinary and necessary expenses paid out of earnings in the operation of the business and properties of the corporation, etc., exclusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (*b*) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property; that is to say, in cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation, and interest paid on such indebtedness will be deductible only under Item 6 of the return, and, together with other interest charges, must not exceed the limit fixed by the law for such interest deductions.

13. The amount claimed under Item No. 5 (*b*) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute and show as a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. The change in the value of stocks and bonds is properly taken up in the inventories or annual adjustment in the value of such securities and the income or losses indicated by this adjustment may be accounted for accordingly.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a corporation, joint stock *company*, or *association, or insurance company organized under the laws of a foreign country*, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.*

All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. Dividends received upon the stock of other corporations must be included in gross income and, under the provisions of the law, are not deductible therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes for which credit may be taken in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes as such is not deductible, but only taxes actually paid.

21. Reinsurance (except as provided by Note 23) and return premiums should not be included in either gross income or deductions; as "*net written premiums*," agreeing with report to States, should be shown.

22. Mutual fire insurance companies which require their members to make premium deposits to provide for losses and expenses need not return as income any portion of the premium deposits returned to their policyholders.

23. Mutual marine insurance companies shall include in their return of gross income the gross premiums collected and received by them, *less reinsurance.* (See note 21.)

24. Mutual marine insurance companies are entitled to deduct from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof.

25. Life insurance companies need not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder within such year.

26. Mutual fire insurance companies must return as income such portions of premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

27. The deduction allowed under the act of August 5, 1909, of amounts received as dividends upon stock of other corporations subject to the tax therein imposed is not allowed under the act of October 3, 1913.

28. In the case of assessment insurance companies, whether domestic or foreign, the actual deposits of sums with the State or Territorial officers pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.[2]

[2] See *supra,* §§ 49, 50.

TO BE FILLED IN BY COLLECTORS.

List No. ..... *Class* .....

.....*District of* .....

Date received ....., 191

FORM 1031.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

Page .....*Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

BANKS AND OTHER FINANCIAL INSTITUTIONS.

Return of Net Income received during the {calendar / fiscal} year ended ....., 191

by .....

(Name of banking or other financial institution.)

a corporation, the principal place of business of which is located at .....
(Street and No.)

City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year ..... $.....

2. Total amount of bonded and other indebtedness outstanding at close of year ..... $.....

3. GROSS INCOME (see Note A, and instructions, paragraphs 10, 17, 18, and 19) ..... $.....

DEDUCTIONS.

4. (*a*) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation EXCLUSIVE OF INTEREST PAYMENTS. (See Note B) ..... $.....

(*b*) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form) ..... $.....

5. (*a*) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(*b*) Total amount of depreciation for the year ..... $.....

6. (*a*) Total amount of interest, exclusive of interest on deposits, accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year ..... $.....

(*b*) Total amount of interest paid within the year on deposits ..... $.....

(*c*) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (*a*) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof ..... $.....

(*b*) Foreign taxes paid ..... $.....

TOTAL DEDUCTIONS ..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

STATE OF ....., *County of* ....., TO WIT:

....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and

every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

SWORN AND SUBSCRIBED to before me this .....

day of ....., 191 .....
President.

SEAL OF OFFICER TAKING AFFIDAVIT. .....
(Official capacity.)

....
Treasurer.

Note A.—Gross income shall consist of the total revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which the return is made.

Note B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year. Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, should not be deducted in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See paragraph 12 on reverse of this form.)

TO BE FILLED IN BY COLLECTORS.

List No. ..... *Class* .....

.....*District of* .....

Date received ....., 191

FORM 1032.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

Page .....*Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

PUBLIC SERVICE CORPORATIONS.

RETURN OF NET INCOME received during the { calendar / fiscal } year ended ....., 191

by .....

(Name of corporation, joint-stock company, or association.)

The principal place of business of which is located at .....
(Street and No.)

City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year ..... $.....

2. Total amount of bonded and other indebtedness outstanding at close of year ..... $.....

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3. GROSS INCOME (see Note A, and instructions, paragraphs 10, 17, 18, and 19) ..... $.....

DEDUCTIONS.

4. (*a*) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation, EXCLUSIVE OF INTEREST PAYMENTS. (See Note B) ..... $.....

(*b*) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form) ..... $.....

5. (*a*) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(*b*) Total amount of depreciation for the year. (See pragraphs 13 and 14) ..... $.....

6. (*a*) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year ..... $.....

(*b*) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (*a*) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof ..... $.....

(*b*) Foreign taxes paid ..... $.....

TOTAL DEDUCTIONS ..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

STATE OF ....., ..., *County of* ....., TO W

....., President, and ....., Treasurer, of

the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever,

received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax of 1 per centum is to be calculated and assessed.

SWORN AND SUBSCRIBED to before me this .....

day of ....., 191

SEAL OF OFFICER TAKING AFFIDAVIT. .....

.....
President.

.....
(Official capacity.)

.....
Treasurer.

Note A.—Gross income shall consist of the total revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which return is made.

Note B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year. Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, should not be deducted in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See paragraph 12 on reverse of this form.)

TO BE FILLED IN BY COLLECTORS.

List No. .....*Class* .....

.....*District of* .....

Date received ....., 191

FORM 1033.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March, 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(see instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

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UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MANUFACTURING CORPORATIONS.

Return of Net Income received during the {calendar / fiscal} year ended ....., 191

by .....

(Name of corporation, joint-stock company, or association.)

the principal place of business of which is located at .....

(Street and No.)

City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year ..... $.....

2. Total amount of bonded and other indebtedness outstanding at close of year ..... $.....

3. Gross Income (see Note A, and instructions, paragraphs 10, 17, 18, 19, 22, and 23) ..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation exclusive of interest payments (see Note B and paragraph 23) ..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property (see paragraph 12 on reverse of this form) ..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(b) Total amount of depreciation for the year (see paragraphs 13 and 14) ..... $.....

6. (a) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year ..... $.....

(b) Total amount of interest received upon the obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof ..... $.....

(b) Foreign taxes paid ..... $.....

Total Deductions ..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

Note.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item, the word "none" must be written in such blank spaces.

State of ....., County of ....., to wit:

....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein

set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this .....

day of ....., 191

.....
President.

.....

SEAL OF OFFICER TAKING AFFIDAVIT.

.....
(Official capacity.)

.....
Treasurer.

Note A.—Gross income in the case of a manufacturing corporation shall include the total receipts from all manufactured goods sold during the year, increased or decreased accordingly as there is gain or loss ascertained through an accounting or inventory of the finished and unfinished product, raw material, etc., on hand at the close of the year. To the income thus ascertained there should be added the income received from any and all other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received on the obligations of a State or political subdivision thereof, and interest received on the obligations of the United States or its possessions, the aggregate to be the gross income returned.

Note B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. "Total amount of all ordinary and necessary expenses," etc., shall include expenditures for material, labor, salaries, wages, fuel, and other expenses incident to the cost of the finished product. Amounts of **income expended in paying dividends on stock,** preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to property account, **should not be deducted in ascertaining the net income** upon which the tax is computed. Interest paid as rental or in lieu of rental is deductible under Item 4 (**b**). (See **paragraph 12 on reverse of this form.)**

TO BE FILLED IN BY COLLECTORS.

List No. .....*Class* .....

.....*District of* .....

Date received ....., 191

FORM 1034.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March, 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

Page ..... *Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MERCANTILE CORPORATIONS.

(Corporations whose principal business is buying and selling.)

Return of Net Income received during the { calendar / fiscal } year ended 191

by .....

(Name of corporation, joint-stock company, or association.)

the principal place of business of which is located at .....
(Street and No.)

City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year ..... $.....

2. Total amount of bonded and other indebtedness outstanding at close of year ..... $.....

---

3. Gross Income (see Note A, and instructions, paragraphs 10, 17, 18, 19, and 21) ..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation exclusive of interest payments (see Note B) ..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property (see paragraph 12 on reverse of this form) ..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(b) Total amount of depreciation for the year ..... $.....

6. (a) Total amount of interest accrued and paid within the year on an amount of bonded and other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year .... $.....

(b) Total amount of interest received upon obligations of a State or political subdivision thereof and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof ..... $.....

(b) Foreign taxes paid ..... $.....

Total Deductions ..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

Note.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item, the word "none" must be written in such blank spaces.

State of ....., County of ....., to wit:

....., President, and ....., Treasurer, of

the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein

set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this .....

day of ....., 191 .....,.....
President.

.....

SEAL OF OFFICER TAKING AFFIDAVIT.

....,.....
Treasurer.

(Official capacity.)

Note A.—The gross amount of income received during the year from all sources shall, in the case of a mercantile corporation, consist of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a **charge** to the account of the sum of the inventory at beginning of the year and a **credit** to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint-stock companies, and associations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions. In determining this amount no account shall be taken of allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.

Note B.—The **deductions** authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. Amounts of **income expended in paying dividends** on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, **should not be deducted in ascertaining annual net income.** Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted in Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should, however, be separately stated under Item 4 (b). (See paragraph 12, on reverse of this form.)

TO BE FILLED IN BY COLLECTORS.

List No. ..... *Class* .....

.....*District of* .....

Date received ....., 191

FORM 1035.

THE PENALTY

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on other side.)

TO BE FILLED IN BY INTERNAL REVENUE BUREAU.

Assessment List ....., 191

Page .....*Line* .....

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MISCELLANEOUS CORPORATIONS.

Return of Net Income received during the {*calendar* / *fiscal*} *year ended* ....., 191

by .....

(Name of corporation, joint-stock company, or association.)

the principal place of business of which is located at .....
(Street and No.)

City or Town of ....., *in the State of* .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year ..... $.....

2. Total amount of bonded and other indebtedness outstanding at close of year ..... $.....

3. GROSS INCOME (see Note A, and instructions, paragraphs 10, 17, 18, and 19) ..... $.....

DEDUCTIONS.

4. (*a*) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation, EXCLUSIVE OF INTEREST PAYMENTS. (See Note B.) ..... $.....

(*b*) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form.) ..... $.....

5. (*a*) Total amount of losses sustained during the year not compensated by insurance or otherwise ..... $.....

(*b*) Total amount of depreciation for the year. (See paragraphs 13 and 14) ..... $.....

6. (*a*) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year ..... $.....

(*b*) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (*a*) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof..... $.....

(*b*) Foreign taxes paid ..... $.....

TOTAL DEDUCTIONS ..... $.....

8. Net income on which tax at 1 per centum is calculated..... ..... $.....

NOTE.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item, the word "none" must be written in such blank spaces.

STATE OF ....., *County of* ....., TO WIT:

..... President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction

whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

SWORN AND SUBSCRIBED to before me this .....

day of .....,191 .....

President.

.....

SEAL OF OFFICER TAKING AFFIDAVIT. ....

(Official capacity.) *Treasurer.*

Note A.—Gross income shall consist of the total of the gross revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which the return is made.

Note B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. Amounts of income **expended in paying dividends on stock**, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, **are not proper deductions in ascertaining annual net income.** Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted in Item 4, if the interest is paid, as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See Note 12 on reverse of this form.)

The Treasury Department has promulgated the following instructions, which were endorsed upon the forms for the return of corporations except in the case of insurance companies for which special instructions are issued:

INSTRUCTIONS.

Special Notice.—This form, properly filled out and executed, must be in the hands of the collector of internal revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed

with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*[3]

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due. or within the thirty-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in instalments or upon assessment, only so much of the capital as has been actually paid in upon such instalments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year.[4] In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.[5]

11. Item No. 4 (*a*) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation,[6] etc., exclusive

[3] *Supra*, § 26.
[4] But see *supra*, § 41.
[5] *Supra*, §§ 21, 22, 24.
[6] *Supra*, § 42.

of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (*b*) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (*b*) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under item 5 (*a*) of the return.[7]

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of inter-bearing [Sic] indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close

[7] *Supra*, §§ 45, 48.

of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.[8]

[8] *Supra*, § 34.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.[9]

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year."

[9] But see *supra*, § 41.

§ 61. Secrecy of returns. The statute provides: "When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided,* That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further,* That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000." [1]

The Revised Statutes as amended therein further provide: "It shall be unlawful for any collector, deputy collector, agent, clerk or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense

§ 61. [1] Subsection G (*d*).

against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, or at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government." [2]

It was ruled under a former commissioner that income returns are not privileged communications and the collector has no right to withhold them in evidence.[3]

The rules for the collection of internal revenue forbid the collectors to produce the records, or the copies thereof, in the State court. They are also directed to decline to testify as to facts contained in the records or coming to their knowledge in their official capacity.[4] This rule was authorized by the general authority conferred on the Secretary of the Treasury by the Revised Statutes of the United States.[5] In England a defendant agreed to sell his business to the plaintiff, stating his income from it to be £2,000 per annum. The plaintiff brought a bill of discovery as to the defendant's income, on the ground that the defendant had stated to the tax commissioners that his income was only £500; and it was held that discovery would not be allowed, since it would render the defendant liable to the penalty; and the master of the rolls went even further in saying that discovery would not be allowed if there were any question of a penalty, "Considering the provisions contained in the act for preventing or avoiding disclosure of the returns." [6] How far such a decision is applicable under the present statute remains to be seen.

§ 62. Discovery. The Revised Statutes further provide that "When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make according to the best informa-

[2] U. S. Rev. Stat. § 3167, U. S. Comp. Stat. 1901, p. 2058, as amended by this Act of subsection I.

[3] Ruling 10 Int. Rev. Rec. 5.

[4] U. S. Rev. Stat. § 161, U. S. Comp. Stat. 1901, p. 80. See Foster's Fed. Pr. 5th ed. § 339, p. 1092, where the rule is set forth at length.

[5] *Boske* v. *Comingore*, 177 U. S. 459, 460, 461, 44 L. ed. 846, 847, 20 Sup. Ct. Rep. 701; s. c. *Re Comingore*, 96 Fed. 552; *Stegall* v. *Thurman*, 175 Fed. 813. See *Re Lamberton*, 124 Fed. 446.

[6] *Mitchell* v. *Koecker*, 11 Beav. 380, 382. See, also, authorities cited *infra* under Part II.

tion which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association." [1]

In order to make it possible that the collector may make the return in case of the default of the taxpayer, various proceedings have been devised to assist him. Of these, the first are proceedings for discovery. It is provided: "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postoffice, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath. respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not

§62. [1] U. S. Rev. Stat. § 3176, U. amended by Act of October 3, 1913, S. Comp. Stat. 1901, p. 2068, as I.

reside and cannot be found within such state, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned." [2]

It is to be observed that it is only the collector and not the deputy collector who is authorized to issue such process. His right to this examination is to be distinguished from that conferred by section 3163 of the Revised Statutes upon the former supervisors of internal revenue. The latter were entitled to inspection of "books, papers, accounts, and premises," without notice to the taxpayers; but the collector under section 3174 is entitled to the examination by the express words of the statute only after notice by means of this summons.[3] Accordingly the summons which he issues should state the object of the examination with sufficient fairness: "My impression is that the summons should state with reasonable certainty the cause of its being issued; as that the assessor is dissatisfied with the returns or the like, and the subject-matter of the inquiry. It is not like the mere subpœna." [4] The summons should state the place where the examination is to be held. It must allow a reasonable time in which to comply with its command and must be limited to the realm of examination into which the collector is entitled to enter.[5] Thus it was held that the summons cannot require the production of books kept anterior to the passage of the income tax laws.[6] The right to examination is confined to the books of the taxpayer, and the examination cannot be made to include books of persons with whom the taxpayer has had dealings.[7]

The summons "shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand or left at his last and usual place of abode, allowing such

[2] U. S. Rev. Stat. § 3173, as amended by Act of October 3, 1913, I.

[3] *Stanwood* v. *Green*, 2 Abb. (U. S.) 184, 3 Am. L. T. 133, Fed. Cas. No. 13,301.

[4] Lowell, J., *In re Chadwick*, 1 Low. Dec. 439, 443, Fed. Cas. No. 2,570; *In re Phillips*, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097.

[5] *U. S.* v. *Fordyce*, 13 Int. Rev. Rec. 77. Fed. Cas. No. 15,130.

[6] *Ibid.*

[7] *Re Strouse*, 1 Sawy. 605, Fed. Cas. No. 13,548.

person one day for each twenty-five miles he may be required to travel computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty." [8]

In a proceeding of this character, where the taxpayer claimed the privilege of refusing to produce his books, on the ground that a criminal proceeding had been commenced against him for making false and fraudulent returns, and that to produce the books or give testimony would incriminate him, Mr. Justice BLATCHFORD said:

"The use of any entries in the books and of any testimony given is solely to furnish evidence for making a true return. If there were no entries in any books of account in the possession, custody, or care of the relator relating to the trade or business of the relator during the period named in the summons, the relator is not bound to produce them, but if there are such entries, he is bound to bring the books. He refuses now to bring the books at all, while he does not deny that they contain such entries. He must therefore bring the books. But he is not at once obliged to submit the books, or any of them, to the inspection of the assessor or of any other person.[9] The entries in question and not the books are the things sought for by the section. When the books are brought, the relator must appear with them under the summons to give testimony. He must then be asked whether there are any such entries as the summons specified. If he says there are, he must then be asked to exhibit any entry or entries relating to the particular point or matter to be named in the inquiry within the scope of the summons as to subject-matter and time. If he says that he cannot do so without incriminating himself, or furnishing thereby a link in the chain of evidence which might criminate him, he is protected from exhibiting such entry or entries. And he is protected in like manner from giving testimony in reply to any particular question put to him. If

[8] U. S. Rev. Stat. § 3174.

[9] But see *contra*, *In re Strouse*, 1 Sawy. 605, Fed. Cas. No. 13,548.

there be any entry as to which he does not claim protection, he is entitled in disclosing such entry, to withhold and conceal all entries as to which he does claim protection. The power of the assessor under the fourteenth section [10] to make out a proper return on which to assess the tax, and then to add one hundred per cent. to such tax, in case a false return has been made, is ample, even in the absence of the books and testimony of the relator; and the withholding of such books and testimony when an opportunity is offered to the relator to have the benefit of them, will warrant the assessor in making out a return on the best information he can obtain and in assessing the tax thereon, and will deprive the relator of all ground of complaint as to the amount of the tax." [11]

In accordance with this opinion, the examination was directed to proceed in the manner indicated.

"Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and if satisfactory proof is made, to issue an attachment directed to some proper officer for the arrest of such person, and upon his being brought before him, to proceed to the hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such person for his default or disobedience." [12]

Judge SHIPMAN suggested a query as to the constitutionality of the foregoing section.[13] It was held constitutional, however, in at least two cases; [14] but the Supreme Court of the United States has never passed upon the question.[15]

[10] U. S. R. S. § 3176.

[11] *Re Lippman*, 3 Ben. 95, Fed. Cas. No. 8,382.

[12] U. S. Rev. Stat. § 3175.

[13] *Ex parte Ives*, 1 Int. Rev. Rec. 145, Fed. Cas. No. 7,114.

[14] *In re Meador*, 10 Int. Rev. Rec. 74, Fed. Cas. No. 9,375; *Perry* v. *Newsome*, 10 Int. Rev. Rec. 20, Fed. Cas. No. 11,009.

[15] It is discussed at length *supra*, § 18.

It has been held that an order to show cause may issue before the attachment;[16] that the proceedings not being criminal in their character may be amended by the court;[17] and that an examination of the taxpayer will not be refused on the ground that the examination would expose him to a penalty, such penalty not being within the constitutional provision against self-incrimination.[18]

It was held in one case that in a proceeding for contempt, no supersedeas would lie.[19] No provision of law existing whereby a writ of error would lie to the decision made by the judge in a proceeding of this nature out of court and while sitting simply as judge under the revenue acts of 1866 and 1868."[20] This decision, however, was rendered before the Act of March 3, 1891 which has since been incorporated in the Judicial Code.[21]

§ 63. **Entry of taxpayer's premises.** The collector has a second remedy for refusal on the part of the taxpayer to make a return.

"Any collector, deputy collector, or inspector may enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept within his district, so far as it may be necessary for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same who refuses to admit such officer, or to suffer him to examine such article or articles, shall for every such refusal forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector in the execution of any power or authority vested in him by law, or

[16] *Ibid.*

[17] *In re Chadwick*, 1 Low. Dec. 439, Fed. Cas. No. 2,570.

[18] *In re Strouse*, 1 Sawy. 605, Fed. Cas. No. 13,548; *In re Phillips*, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097. But see *Boyd* v. *U. S.* 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524, and *supra*, §§ 18,19.

[19] *Re Meador*, 10 Int. Rev. Rec. 74, Fed. Cas. No. 9,375.

[20] Act of March 3, 1911, §§ 128, 238; Foster's Fed. Pr. 5th ed. §§ 688, 693, 695.

shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, except in cases otherwise provided for, shall for every such offense forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court." [1]

This provision has been held to be not unconstitutional.[2]

The officers mentioned in the section may enter without process, but the right of entry exists only when the circumstances prescribed in the section arise, that is, where the articles or objects subject to tax are made, produced, kept, or actually exist.[3] Even national banks are not exempt from such entry.[4] The only officers authorized to make the entry are those specifically named in the section. A collector's clerk, therefore, has no such right.[5] An indictment under this section must state the cause of action exactly. It is fatally defective, for example, unless it says that at the time of the entry the premises contained articles subject to tax.[6] The statutory words "forcible attempt to rescue" without specifications do not sufficiently describe the act to sustain an indictment, even after verdict.[7]

§ 64. Penalties. The penalties enforced by the act are for three different defaults: for failure to make a return, for making a false or fraudulent return, and for failure to pay the tax. Penalties for default in the payment of the tax are subsequently considered.[1]

The act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified

§ 63. [1] U. S. Rev. Stat. § 3177. U. S. Comp. Stat. 1901, 2069, Fed. Cas. No. 9,375.

[2] *In re Meador*, 10 Int. Rev. Rec. 74, Fed. Cas. No. 9,375. But see *supra*, § 19.

[3] *U. S.* v. *Fears*, 3 Woods, 610, Fed. Cas. No. 15,080; *U. S.* v. *Mann*, 95 U. S. 580, 24 L. ed. 531.

[4] *U. S.* v. *Rhawn*, 11 Phila. 521, Fed. Cas. No. 16,150.

[5] *U. S.* v. *Mann*, 95 U. S. 580, 24 L. ed. 531.

[6] *U. S.* v. *Ford*, 34 Fed. 26. But see *U. S.* v. *Fears*, 3 Woods, 510, Fed. Cas. No. 15,080, when those words were used without objection.

§ 64. [1] *Infra*, § 79.

in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution." [2]

"If any corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association or insurance company shall be liable to a penalty of not exceeding $10,000." [3]

The Revised Statutes provide that: "In case of any return of a false or fraudulent list or valuation intentionally," the Commissioner of Internal Revenue "shall add 100 per centum to such tax; in case of refusal or neglect, except in case of sickness or absence, to make a list or return or to verify the same as aforesaid, he shall add fifty per centum to said tax." [4]

Upon the courts is imposed the task of reconciling the inconsistency of some of these provisions.

The penalty imposed by the Revised Statutes has been held constitutional,[5] although Mr. Justice FIELD questioned whether it could be imposed in the absence of fraud on the part of the taxpayers.[6] That case reversed on another ground a decision by Judge Shipman at circuit,[7] in which he held that the penalty could be imposed under such circumstances. On the other hand, Attorney General Sneed ruled that it could not.[8]

By the procedure under the former acts there were two officials whose co-operation was necessary to collect the tax,—one was the assessor whose general duty it was to procure the

[2] Subsection F.

[3] Subsection G (d).

[4] U. S. Rev. Stat. § 3176, U. S. Comp. Stat. 1901, p. 2068, as amended by Act of October 3, 1913.

[5] *Doll* v. *Evans*, 9 Phila. 364, Fed. Cas. No. 3,969.

[6] *German Savings Bank* v. *Archbald*, 104 U. S. 708, 26 L. ed. 901.

[7] s. c. 15 Blatchf. 398, Fed. Cas. No. 5,364.

[8] 11 Ops. Atty. Gen. 183.

return and fix the amount of the tax, and the other was the collector whose sole duty it was to collect. It was ruled by one attorney general that the power to add the penalty to the return ceased when the assessor had transmitted the list to the collector for collection. Under the present law, which requires the tax to be assessed by the commissioner, it may be a question whether the same condition would now obtain.

It has been held that when suit is brought to recover a tax with penalties, only one penalty can be recovered for all defaults prior to its commencement.[9]

The Act further provides: That, as regards individuals, corporations, joint-stock companies, associations and insurance companies, "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons;"[10] which, as regards corporations, joint-stock companies, associations and insurance companies, omits the clause excepting "estates of insane, deceased, or insolvent persons." By virtue of section 5292 of the Revised Statutes, U. S. Comp. Stat. 1901, p. 3604, the Secretary of the Treasury is authorized to remit penalties. This power is discretionary with him and is one of mercy. It cannot therefore be reviewed either in the Court of Claims or any other court.[11]

§ 65. Increase of return. "If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case,

[9] *U. S.* v. *New York Guarantee, etc. Co.* 8 Ben. 269, Fed. Cas. No. 15,872; *U. S.* v. *Brooklyn, etc. Railway,* 14 Fed. 284; *U. S.* v. *Erie Railway Co.* 24 Int. Rev. Rec. 76. Fed. Cas. No. 15,056, reversed on another point, s. c. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 293. And see also the motion for a rehearing, which was denied, s. c. 107 U. S. 1, 27 L. ed. 385, 2 Sup. Ct. Rep. 83.

[10] Subsection E; Subsection G (*c*).

[11] *Dorsheimer* v. *U. S.* 7 Wall. 166, 175, 19 L. ed. 187, 190.

with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts."[1] In a subsequent subsection, after providing for the reform of the return made by corporations, joint-stock companies or associations, and insurance companies, it further provides: "All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue."[2] This seems to deprive the collector of power to increase the returns made by corporations and such companies or associations. The same subsection further provides: that "the returns together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue." This, by implication at least, grants such commissioner the power to make additions to the return.[3]

The Act of 1894 provided that the decision of the collector in the matters intrusted to his jurisdiction, "unless reversed by the Commissioner of Internal Revenue, shall be final."[4] The omission of this clause from the present act may be deemed to show the intent of Congress—that his decision, even when not set aside by the commissioner, may be reviewed by the courts.

§ 66. Assessment. After the return has been made and its form definitely fixed, it must be forwarded to the Commissioner of Internal Revenue for assessment. The regulations provide the time when the return must be sent to the commissioner by the collector.[1]

The Revised Statutes provide:

"The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal revenue act, where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete in consequence of the omission of the name of any

§ 63. [1] Subsection D.
[2] Subsection G (*c*).
[3] Subsection G (*d*).
[4] Act of August 28, 1894, § 29.
§ 64. [1] These rules are printed at the end of this volume.

person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed." [2]

The assessment of the tax is different in its nature from that under the tax laws which usually prevail in the different states.

As Mr. Justice BLATCHFORD says: "A scheme of taxation like that found in the Federal statutes, where there is imposed by the statute a fixed tax by a percentage on an amount of money the elements for ascertaining which are definitely designated in the statute, or a fixed tax on a given amount on the designated object or subject of tax, is a very different scheme of taxation from that which prevails generally in the statutes where power is confided to public officers to value property, real or personal, and to fix the percentage of the tax thereon." [3] The amount of income being ascertained, the tax is a mere matter of numerical calculation. The act of assessment, however, includes probably the allowance of deductions and some matters of discretion, such, as perhaps, a review of the imposition of a penalty by the collector even when there has been no formal appeal.

The statute states explicitly "that all assessments shall be

[2] U. S. Rev. Stat. § 3182 (U. S. Comp. Stat. 1901, p. 2071).

[3] *U. S.* v. *Tilden*, 24 Int. Rev. Rec. 99, 103, Fed. Cas. No. 16,519.

made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of reversal or neglect to make such return and in cases of false or fraudulent returns."[4] § 3182 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2071), which has been quoted above, may be applied to this proceeding.

It was held, in Alabama, that there was no remedy to correct the mistake of a State assessor, honestly made, when determining the annual income, when the taxpayer refused to make the return required by law, and that to save his rights the taxpayer should make a proper return under protest.[5]

The effect of the assessment after it is made is not specifically set forth in the act. There is no provision that it shall be conclusive on the taxpayer. It seems to be settled that it is not a bar to a suit by the Government to recover taxes alleged to be due over and above the assessment.[6] Neither is it necessary in order to fix the tax, because the Government may maintain an action of debt for the tax even without an assessment. Mr. Justice GRAY said in a case, under the act of June 30th, 1864, as amended, that "an assessment is not required by the act, nor, if made, conclusive upon either party, and * * * in an action to recover the tax the controlling question is not what has been assessed but what is by law due."[7] The question does not seem to have been directly presented under the old laws whether the assessment is conclusive upon the taxpayer, but the practice seems unquestionably to have been to allow the validity of the assessment to be questioned in a suit at law, and this is impliedly decided in all suits brought by a taxpayer to recover taxes illegally collected from him, in which he recovered judgment.

Section 3226 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2088) provides that "No suit shall be maintained in

[4] Subsections E, G (c).

[5] *Lott* v. *Hubbard*, 44 Ala. 593.

[6] *Little Miami, etc. R. R.* v. *U. S.* 108 U. S. 277, 27 L. ed. 724, 2 Sup. Ct. Rep. 627; s. c., *U. S.* v. *Little Miami, etc. Railroad Co.* 1 Fed. 700; *King* v. *U. S.* 99 U. S. 229, 25 L. ed. 373. See *U. S.* v. *Tilden*, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519, *infra*, § 82.

[7] *United States* v. *Philadelphia R. R. Co.* 123 U. S. 113, 114, 31 L. ed. 138, 139, 8 Sup. Ct. Rep. 77.

any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected * * * until appeal shall have been duly made to the Commissioner of Internal Revenue." [8] But it has been decided that in spite of that regulation a defendant in a suit brought by the Government for arrears of taxes may question the legality of an assessment, although he did not appeal from it.[9] It was held that the burden is on the Government after long acquiescence (in that case 12 years) to show that the assessment was incorrect.[10] In another case, Mr. Justice BRADLEY said: "The suit thus prohibited (by section 3226) is a suit brought by the person taxed to recover back a tax illegally assessed and collected. This is different from the case now under consideration, which is a suit brought by the Government for collecting the tax, and the person taxed (together with his sureties) is defendant instead of plaintiff. No statute is cited to show that he cannot when thus sued set up the defense that the tax was illegally assessed, although he may not have appealed to the commissioner.

"Is he precluded by any general rule of law from setting up such a defense? Has an assessment of a tax so far the force and effect of a judicial sentence that it cannot be attacked collaterally, but only by some direct proceeding, such as appeal or certiorari, for setting it aside?

"It is undoubtedly true that the decision of an assessor or board of assessors, like those of all other administrative commissioners, are of a *quasi*-judicial character and cannot be questioned collaterally when made within the scope of their jurisdiction; but if they assess persons, property, or operations not taxable, such assessment is illegal and cannot form the basis of an action at law for the collection of the tax, however efficacious it may be for the protection of ministerial officers charged with the duty of actual collection by virtue of a regular warrant or authority therefor. When the government elects to resort to the aid of the courts, it must abide by the legality of the tax. When it follows the statute, its officers

[8] See *infra*, § 88.

[9] *Clinkenbeard* v. *U. S.* 21 Wall. 65, 22 L. ed. 477; *U. S.* v. *Philadelphia, &c Railroad*, 123 U. S. 113.

[10] *U. S.* v. *Philadelphia & Reading R. R. & Co.* 123 U. S. 113, 31 L. ed. 138, 8 Sup. Ct. Rep. 77.

have the protection of the statute and parties must comply with the requirements thereof before they can prosecute as plaintiffs." [11] In accordance with this opinion, it was held that a void assessment by the commissioner and proceedings thereunder could be attacked collaterally. In this case the action was between the taxpayer and the insurance company, the defense being that under a clause in the policy to the effect that if any change should take place in the possession of the property by legal process, it should avoid the policy, a seizure of the insured property under the internal revenue law had avoided the policy. The plaintiff in that case was allowed to show that the assessment was void and the seizure of his property thereunder unauthorized.[12]

Conceding that the assessment is binding as to the taxpayer who is a party to it, it is, nevertheless, not binding as to those who were not parties to it and were not directly affected by it.[13]

Section 3186 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2073) provides as follows: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person." [14] While, as has been seen, the tax is sufficiently fixed without assessment to permit an action of debt, nevertheless, it is held that until there has been an assessment it is not sufficiently fixed so as to create a lien under the foregoing section of the Revised Statutes.[15]

Section 3184 provides as follows: "Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay

11 *Clinkenbeard* v. *U. S.* 21 Wall. 65, 70, 22 L. ed. 477, 478.

12 *Runkle* v. *Citizens' Insurance Co.* 6 Fed. 143. See also *U. S.* v. *Philadelphia & Reading R. R.* 123 U. S. 113, 31 L. ed. 138, 8 Sup. Ct. Rep. 77.

13 *U. S.* v. *Rindskopf*, 8 Biss. 507, Fed. Cas. No. 16,166.

14 See *infra*, § 79.

15 *U. S.* v. *Pacific Railroad*, 1 Fed. 97, and see s. c. 4 Dill. 66, Fed. Cas. No. 15,983; and s. c. 4 Dill. 71, Fed. Cas. No. 15,984; *Brown* v. *Goodwin*, 75 N. Y. 409.

any taxes stated herein, to be left at his dwelling or usual place of business or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of the taxes and interest at the rate of one per centum a month." The notice required by the foregoing section is not a part of the assessment, and the taxpayer is liable to the tax even though he received no such notice.[16]

Section 3182 of the Revised Statutes provides: "Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete, in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed."

A re-assessment may be made under the foregoing section, although the tax was paid under the first assessment.[17] The question was raised,[18] but not decided, whether a re-assessment could be had when the first assessment was erroneous, not by

[16] *U. S.* v. *Bristow*, 20 Fed. 378.
[17] *Doll* v. *Evans*, 9 Phila. 364.
[18] *Daniels* v. *Tarbox*, 9 Blatchf. 176, Fed. Cas. No. 3,568.

reason of any default on the part of the taxpayer, but by reason of the assessor's mistake. It was held under former acts that after the assessor had transmitted the list to the collector, he was *functus officio,* and could not thereafter re-assess or examine the taxpayer.[19] This decision was disclaimed by the Commissioner of Internal Revenue.[20] The effect of this case is probably abrogated by section 3182, which abolished the office of assessor and imposed his duties upon the Commissioner of Internal Revenue. There is a dictum to the effect that a re-assessment made within the statutory period of fifteen months may include taxes on income for a period of more than fifteen months before.[21] The lapse of that period does not prevent an action of debt for taxes that are still unpaid;[22] but it does prevent a collection of the taxes by the specific remedies provided by Chapter II. of Title XXXV. of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2063).[23]

§ 67. **Hearing upon the assessment.** As said above, the assessment of the tax, after the returns are in, is made by the Commissioner of Internal Revenue. It is made after the returns and lists of the various collectors have been forwarded to him. It must be made and notice given on or before the first day of June, and an interval until the thirtieth day of June is allowed before payment is required.[1] Whether the taxpayer is entitled to a hearing is not declared.

Under the earlier acts there were two officers: the collector and the assessor, whose duties were fundamentally distinct. It was the assessor's office to make the assessment, and appeals from his decision to the commissioner were entertained perhaps as a matter of grace, for there seems to have been no statutory authority, for them. At the present time, the office of assessor having been abolished, there is no room for a technical appeal from the assessment itself, because the act of assessment and the act of revision can be performed only by the same official.

[19] *In re Brown,* 3 Int. Rev. Rec. 134, Fed. Cas. No. 1,977.

[20] 3 Int. Rev. Rec. 150.

[21] *U. S.* v. *O'Neill,* 19 Fed. 567. But see *Dandelet* v. *Smith,* 18 Wall. 642, 21 L. ed. 758.

[22] *U. S.* v. *Little Miami, etc. Railroad,* 1 Fed. 700.

[23] *In re Archer,* 9 Ben. 427, Fed. Cas. No. 506.

§ 67. [1] Act of October 3, 1913, subsection F.

The appeal from the acts of the collector and his deputy in increasing the return has been previously considered.[2]

After the assessment has been made, a list of the taxes assessed is returned to the tax collector, whose duty then is to immediately proceed to collect the tax.[3] The act of assessment has been said to be a *quasi*-judicial function.[4]

Many questions might be raised after the assessment or at the time of making it which would not be included in the appeal specifically granted in the act.[5] The questions which are there provided for relate to the amount of the list, that is, as to the right of the collector to increase the list. Obviously, therefore, it is or should be the right of the taxpayer to have a hearing on those questions before he pays the tax, and it undoubtedly will be allowed by the department at some time or other in the course of the proceedings.

What the effect of a hearing would be is perhaps doubtful. It has been suggested that the repeal of the law appointing assessors was impliedly a repeal of a section of the Revised Statutes requiring an appeal after payment of the tax and before suit is commenced on the ground that the commissioner having already made and rendered his decision as to the assessment, "it would seem to be a mockery" to make a second application to reverse his decision after the tax is paid.[6]

[2] § 65, *supra*.

[3] U. S. Rev. Stat. § 3184 (U. S. Comp. Stat. 1901, p. 2072).

[4] *Clinkenbeard* v. *U. S.* 21 Wall. 65, 70, 22 L. ed. 477, 478.

[5] Act of August 28, 1894, § 29; *supra*, § 53.

[6] Judges HUGHES in *U. S.* v. *Myers*, 3 Hughes, 239, 243, Fed. Cas. No. 15,846. See also *San Francisco Sav. Union* v. *Cary*, 17 Int. Rev. Rec. 109, Fed. Cas. No. 12,317, affirmed on another point in *Cary* v. *San Francisco Savings &c. Society*, 22 Wall. 38, 22 L. ed. 779.

CHAPTER VI.

PAYMENT.

§ 68. Payment by taxpayers for themselves. After the tax has been assessed and all questions raised upon the assessment have been decided by the commissioner, it is the duty of the taxpayer to pay the tax.

The statute provides that assessments against individuals shall be paid on or before the thirtieth of June, except when the commissioner makes a return, when the assessment must be paid immediately upon notification of the amount thereof.[1] It further provides that assessments against corporations, joint-stock companies or associations, and insurance companies, shall also be paid on or before the thirtieth day of June, unless a designation of a day for closing its fiscal year has been made by one or more of them. "Any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed."[2] In such a case the company so designated "shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment;"[3] except in cases of a return and assessment, made by the commissioner, when there has been a refusal or

§ 68. [1] Subsection E.
[2] Subsection G (*c*).
[3] *Ibid.*

neglect to make a return, or the return is false or fraudulent.[4] In the latter case, the assessment must be paid immediately upon notification of the amount thereof.[5]

Under former statutes, which provided that the tax—not, as under the present law, the assessment—should be paid on or before specified dates, it was held that taxes were due even without assessment, so that an action of debt could be maintained therefor by the Government.[6]

If the taxpayer delays payment until after the first of July, the following provision of the statute takes effect: "To any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons."[7]

The former statutes describe this imposition of interest as a penalty, but the present act contains no such denomination. The object of the omission was to obviate objections to the discovery. Interest does not begin to run until two contingencies have happened:

This penalty, it will be observed, does not arise until two contingencies have happened.

1. The arrival of the first day of July; and

2. The lapse of ten days after notice and demand. Such instructions as are issued by the commissioner upon the subject will be printed with the Regulations at the end of this volume.

The taxpayer may wish to preserve his rights to recover back his taxes after they are paid. This cannot be done if the payment is voluntary without any contemporary protest or notice of objection.[9] Since the internal revenue laws contain

[4] *Ibid.*

[5] *Ibid.*

[6] *Delaware R. Co.* v. *Prettyman*, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767; *Doll* v. *Evans*, 9 Phila. 364, Fed. Cas. No. 3,969.

[7] Subsection D; Subsection G (*c*). The last citation applies to corporations, joint-stock companies or associations, and insurance companies, and it omits the provision excepting "estates of insane, deceased, or insolvent persons."

[9] *Chesebrough* v. *U. S.* 192 U. S. 253, 48 L. ed. 432, 24 Sup. Ct. Rep. 262; *U. S.* v. *N. Y. & Cuba Mail S. S. Co.* 200 U. S. 488, 50 L. ed. 569, 26 Sup. Ct. Rep. 327; Foster's Fed. Pr. 5th ed. § 96, p. 369.

no requirement that the protest shall be in writing, it has been said that an oral protest is sufficient.[10] Where, however, the taxes were paid by a check marked on its face "Paid under protest," it was held that it did not appear that the fact of the protest came sufficiently to the knowledge of the commissioner, and that consequently it was insufficient.[11] The payment not under duress would seem to be insufficient, although made under protest. The payment of an inheritance tax under protest, after a threat by the collector that unless promptly paid it would be collected with a penalty and interest of one per cent a month, was held to be involuntary and to justify a suit against the internal revenue collector to recover the amount of the same.[12]

§ 69. **Receipts.** Whether the tax is paid under protest or not, the taxpayer is entitled to a receipt in accordance with the provisions of subsection J of the present act.

"That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made, such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the

[10] *Wright* v. *Blakeslee*, 101 U. S. 174, 179, 25 L. ed. 1048, 1049. See *Stewart* v. *Barnes*, 153 U. S. 456, 459, 38 L. ed. 781, 782, 14 Sup. Ct. Rep. 849.

[11] *Kings County Savings Institution* v. *Blair*, 116 U. S. 200, 29 L. ed. 657, 6 Sup. Ct. Rep. 353.

[12] *Simons* v. *U. S.* 19 Ct. Cl. 601. See *Hubbard* v. *Kelley*, 8 W. Va. 46.

same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt." [1]

Any regulations of the Commissioner on this point will be printed with his other Regulations at the end of this volume.

§ 70. Payment of tax by a person owing annual payments to another. All persons, firms, companies, co-partnerships, corporations, joint-stock companies, associations and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to tax, when such annual income is equal to at least $3,000, must deduct and withhold from the debtor and pay to the Government the normal income tax upon the same, except in the case of dividends on capital stock, or from the net earnings of corporations or joint-stock companies and associations subject to a like tax.[1] The collector must, if required, give a separate receipt for each tax so paid by any debtor on account of payment made out of sums due separate creditors, in such form that the debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands, and such receipt is sufficient evidence in favor of the debtor to justify him in withholding the amount therein expressed from his next payment to his creditor.[2] The creditor upon giving the debtor a full written receipt acknowledging the payment of whatever sum is actually paid and accepting the amount of the tax paid as aforesaid, specifying the same as a further satisfaction of the debt, may require the surrender to him of such collector's receipt.[3] "The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals." [4] The additional tax [5] and the tax upon the net income of corporations, joint-stock companies or associations, and insurance companies,[6] must be paid by the recipient upon the net income "from all sources." The provision for the payment of tax at the source applies to lessees,[7] mortgagors of real or personal property,[8] trustees acting

§ 69. Act of October 3, 1913, subsection J.

§ 70. [1] Act of Oct. 3, 1913, subsection D.

[2] *Ibid.* Subsection J

[3] *Ibid.*

[4] *Ibid.* Subsection E.

[5] *Ibid.* Subsection A, subd. 2.

[6] *Ibid.* Subsection G (a).

[7] *Infra,* § 71.

[8] *Infra,* § 75.

in any trust capacity, executors, administrators,[9] agents,[9a] receivers,[10] conservators, employers[11] and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits and income of another person.[12] When a note maturing after November 1, 1913, is given in payment of interest, rent or other income, accruing after March, 1st, 1913, the maker of the note is considered by the Treasury Department to be the source where the income originates and is required by the Department to withhold the normal tax of one per cent. on the entire amount of the note, if the note is in excess of $3,000, unless a claim is made for exemption in accordance with the statute. The same rule applies when the note is presented by one who has bought or discounted the same. In cases of such purchase or discount, the amount of the tax should be taken from the purchase price. Illustrations of income the tax whereupon should be paid by the individual and not deducted at the source are the incomes of farmers, mercants, agents compensated by commissions, lawyers, doctors, authors, inventors and other members of the professions, unless they are paid fixed salaries. The courts have not decided whether, in the case of alimony exceeding $3,000, the husband is entitled or required to deduct the tax. In Great Britain, it has been held to apply to a husband who, by a deed of separation, is bound to pay his wife a yearly allowance,[13] but not to interest paid a municipal corporation by a land-owner in respect of his share of the expense of paving.[14]

It was held in Great Britain: that when a loan not secured

9 *Infra*, § 77.

9a Mr. Walter Lindner, of the New York bar, has expressed the opinion that the tax must be paid at the source by a rent collector who collects more than $3,000 gross rent during the year from the tenants of different buildings or different apartments in the same building, although he has paid out of the same disbursements connected with the buildings, which reduce the net amount of income collected by him to $3,000 or less. N. Y. Sun, Nov. 23, 1913. In view, however, of the probabilities of vacancies, a more reasonable construction of the statute would seem to be that the annual gains are not fixed or determinable, and that in any event the act only applies to the net income payable to the principal, not to the gross amount collected.

10 *Infra*, §§ 74, 77.

11 *Infra*, § 73.

12 *Infra*, § 77.

13 *Dalrymple* v. *Dalrymple*, 4 F. 545, 39 Scot. L. R. 348.

14 *Corporation* v. *Lumsden* (1913), 77 J. P. 124.

by a mortgage was paid within less than a year, interest upon the same should not be thus deducted and paid by the debtor.[15] That where the interest is for an uncertain period, but is calculated by the year and accrues for more than a year, it may be deducted.[16] That the tax cannot be deducted from a payment into court.[17] That when a payment is made to a creditor, who has proved his debt in an administration suit, the income tax may be deducted;[19] and that a demand is not invalidated by its claim of interest in full without allowing for a deduction of the tax.[20]

It was said by an eminent authority while the bill was pending in Congress:

"It should be observed that the person, corporation, joint-stock company, &c., thus deducting and withholding part of the income of a taxable person would not be required to pay it over to the Government until June 30 of the following year; and even though the creditor from whom it was withheld may not be taxable he could not require the debtor to pay the portion of the income withheld, except by filing the prescribed affidavit and return of his entire income for the year after the close of the year, but before the 29th day of January. The act contains no provision requiring the debtor to pay over the withheld income of the creditor even upon filing the required affidavit and return; and the debtor would be entitled to withhold the amount of the tax without any security to the Government or to the per-

15 *Mosse* v. *Salt*, 32 Beav. 269, 273, 276, 32 L. J. Ch. N. S. 756.

Goslings & Sharpe v. *Blake*, L. R. 23 Q. B. Div. 324, 58 L. J. Q. B. N. S. 446, 37 Week. Rep. 774, 2 Tax Cas. 450 (1889); *De Peyer* v. *The King*, 100 L. T. N. S. 256 (1909). *Contra, Lord Advocate* v. *Corporation of Edinburgh*, 6 F. 1, 41 Scot. L. R. 1, 4 Tax Cas. 627 (1903); *Bebb* v. *Bunny*, 1 Kay & J. 216, 1 Jur. N. S. 203; where the interest was stipulated at a certain rate per year, although it accrued for a less time.

16 *Re Craven's Mortgage, Davies* v. *Craven* [1907], 2 Ch. 448, 76 L. J. Ch. N. S. 651, 97 L. T. N. S. 475.

17 *Holroyd* v. *Wyatt*, 1 De G. & S. 125 (1847); *Dawson* v. *Dawson*, 11 Jur. 984 (1847); *Humble* v. *Humble*, 12 Beav. 43 (1849); *Bebb* v. *Bunny*, 1 Kay & J. 216, 219 (1854).

19 *Dinning* v. *Henderson*, 3 De G. & S. 702, 19 L. J. Ch. N. S. 273, 14 Jur. N. S. 1038 (1850); criticized in *Goslings & Sharpe* v. *Blake*. L. R. 23 Q. B. Div. 324, 58 L. J. Q. B. N. S. 446, 37 Week. Rep. 774; 2 Tax Cas. 450 (1889).

20 *Re Cooper* [1911], 2 K. B. 550, 80 L. J. K. B. N. S. 590, 105 L. T. N. S. 273, 55 Sol. Jo. 554 (1911).

son entitled thereto." [21] As finally enacted, however, it provides: that when the proper notice is filed with the person who otherwise would pay the tax at its source "thereupon no tax shall be withheld upon the amount of such exemption.[22]

"For the present year of 1913 (from March 1 to December 31) the deductions allowed under paragraph B shall be five-sixths of the deductions allowable for a calendar year, as specified in paragraph D of this law." [23]

"The withholding agent is not required to deduct and withhold prior to November 1, 1913, the normal tax of 1 per cent for which an individual is liable.

Whenever the total amount of income paid to any person by a withholding agent *after* October 31, 1913, shall be in excess of $3,000, then, in that event, the withholding agent shall be liable for and shall deduct and withhold the tax on such amount, unless such person shall file a claim for an exemption as allowed in paragraph D of this act, the amount of exemption allowable being $2,500 if the annual exemption is $3,000, or $3,333.33 if the annual exemption is $4,000, as the case may be." [24]

It has been said by Mr. Albert H. Walker: "This vicarious scheme is perhaps violative of the Fifth Amendment to the Constitution of the United States." [25]

§ 71. Payment of income tax by lessees. Lessees, who are bound to pay rent in excess of $3,000 for any taxable year, are authorized and required to deduct, withhold and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the normal income tax imposed upon the same and are made personally liable for such tax.[1] The lessee is entitled to receive a receipt from the collector of internal revenue for the amount of the tax so paid, and the receipt is sufficient evidence in the former's favor to justify him in withholding the amount therein expressed from his next payment to his creditor.[2] A vendee of mines or other real estate, who covenants to pay the same in annual installment of a specified amount, irrespective of his receipts therefrom, has no right to

[21] Mr. Victor Morawetz, N. Y. Sun of May 8, 1913.

[22] Act of Oct. 3, 1913, subsection E.

[23] Regulations, Part 2.

[24] *Ibid.*

[25] Walker's Pamphlet, p. 21.

§ 71. [1] Act of October 3, 1913, subsection D.

[2] *Ibid.* Subsection J.

make such a deduction,[3] although such payments cover a period of thirty years.[4]

The owner of a coal mine sold the same to another for a term of fifty years, under a covenant that the latter should pay the former a specified sum down and the same amount yearly thereafter, irrespective of the amount of coal therefrom mined; and that whenever he mined therefrom enough coal to exceed that year's payment, he would pay for each additional Lancashire acre of coal a specified sum until the whole consideration named in the deed had been paid. It was held, in Great Britain, that the annual installment was not rent and that the vendor, and not the vendee, should pay the same.[5]

At least where the rent is payable in monthly, quarterly or other periodical installments, it would seem equitable that the lessee should not be entitled to make any deduction, except from the last installment, provided that such installment is sufficient to meet the tax.

It has been held in England: that the production of the receipt for the tax will be *pro tanto* a defense in an action for rent,[6] although the suit is against an assignee and payment was made by his assignor;[7] that he need not prove the assessment upon the trial.[8] Whether the actual payment is essential to such a defense has not under the present law been decided.[9] When the lessor files with the lessee the requisite notice in writing claiming the benefit of an exemption,[10] "no tax shall be withheld upon the amount of such exemption."[11] It has been held in England that the tenant has the right to such deduction, although the landlord before the payment claimed exemption and the exemption has subsequently been allowed.[12]

No contract entered into after the act took effect is valid in regard to any Federal income tax imposed upon a person liable

[3] *Foley* v. *Fletcher*, 3 Hurlst. & N. 769, 28 L. J. Exch. N. S. 100, 7 Week. Rep. 141, 5 Jur. N. S. 342 (1858).

[4] *Taylor* v. *Evans*, 1 Hurlst. & N. 101, 25 L. J. Exch. N. S. 269.

[5] *Tinckler* v. *Prentice*, 4 Taunt. 549; *Baker* v. *Davis*, 3 Campb. 474; *Phillips* v. *Beer*, 4 Campb. 266.

[6] *Clennel* v. *Read*, 7 Taunt. 50.

[7] *Phillips* v. *Beer*, 4 Campb. 266.

[8] That it would not be seems to be suggested by *Re Cooper* [1911], 2 K. B. 550, 80 L. J. K. B. N. S. 590, 105 L. T. N. S. 273, 55 Sol. Jo. 554.

[9] See *supra*, § 70.

[10] Subsection E.

[11] *Swatman* v. *Ambler*, 8 Exch. 72, 24 L. J. Ex. Ch. N. S. 185.

[12] Act of October 3, 1913, subsection E.

to such payment.[13] In Great Britain covenants in leases were enforced, which bound the lessee, so long as a tax upon income was imposed to pay further rent to an amount depending upon the amount of such tax,[14] and which bound the landlord to repay the tax to the tenant, if the latter would pay the former the full rental without any deduction for the tax the tenant had paid.

§ 72. **Payment of income tax by employers.** Employers who have agreed to pay to anyone a fixed or determinable salary or compensation exceeding $3,000 for any taxable year are authorized and required to deduct, and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the normal income tax imposed upon the same and are made personally liable for such tax.[1] When such compensation is neither fixed nor determinable nor in excess of $3,000 a year, or it is indefinite or irregular as to amount or time of accrual, there can be no such deduction and the normal tax, if any is due, must be paid by the employee.[2] The benefit of any exemption or deduction to which he may be entitled can be claimed by the employee in the manner previously explained.

§ 73. **Payment by officers and employees of the United States.** Officers and employees of the United States having the control of the payment of a fixed and determinable salary or compensation in excess of $3,000 a year to a Government employee or officer are authorized and required to deduct and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the normal income tax imposed upon the same and are made personally liable for such tax.[1] When such compensation is neither fixed or determinable nor in excess of $3,000 a year, or it is indefinite or irregular as to amount or time of accrual, there can be no such deduction, and the normal tax, if any is due, must be paid by the employee.[2] The benefit of any exemption or deduction to which he may be entitled can be claimed by the employee in the manner previously ex-

[13] *Beadel* v. *Pitt* (1865), 11 L. T. N. S. 592, 593, 13 Week. Rep. 287.

[14] *Lamb* v. *Brewster* (1879), L. R. 4 Q. B. Div. 609.

§ 72. [1] *Ibid.* Act of Oct. 3, 1913, subsection E. It has been ruled that this does not apply to salaries of actors contingent upon the run of a play or the length of the season. T. D. Dec. 5, 1913.

[2] *Ibid.* Subsection B, E.

§ 73. [1] Act of October 3, 1913, subsection E.

[2] *Ibid.* Subsection B, E.

plained.[3] No such deduction is made from the salary of the present President of the United States during his present term, nor from the salaries of the judges of the supreme and inferior courts of the United States now in office.[4] This exemption does not apply to the judges or other officers of the Governments of the District of Columbia, Porto Rico and the Philippine Islands, or the political subdivisions thereof.[5] Whether it applies to the judges of the District Court of Alaska and the United States Court for China is a doubtful question. These are not usually considered to be courts of the United States.[6] The same doubt exists concerning the salaries of members of the Board of General Appraisers and the fees of United States commissioners. Where the officer or employee, is married and lives with his wife, or is entitled to a deduction, for other reasons, he may obtain the same, by filing with the disbursing officer, the proper notice, claiming the benefit thereof within thirty days before the pay-day.[7]

§ 74. Payment by masters, receivers, trustees and referees in bankruptcy, executors and administrators. In the payment by a master, receiver, trustee or referee in bankruptcy, executor or administrator, to creditors of the estate, which is in his hands for administration, the normal income tax must be deducted from so much as is paid for interest.[1]

The former practice of masters in chancery, in the administration of an insolvent's estate, in Great Britain, was to allow creditors to prove the amount of the principal of the debts due them with interest, less the income tax upon debts carrying interest by law, calculated to the date of the judgment or order for administration. The interest less the tax and any costs allowed were added to the principal and dividends calculated on the whole amount. The income tax so deducted was not ac-

[3] *Ibid.* Subsection E.

[4] *Ibid.* Subsection B.

[5] *Ibid.* Subsection M.

[6] *American Insurance Co.* v. *Canter*, 1 Pet. 511, 7 L. ed. 243; *Benner* v. *Porter*, 9 How. 235, 13 L. ed. 119; *Clinton* v. *Englebrecht*, 13 Wall. 434, 20 L. ed. 659; *McAllister* v. *U. S.* 141 U. S. 174, 35 L. ed. 693, 11 Sup. Ct. Rep. 949; *James* v. *U. S.* 202 U. S. 401, 50 L. ed. 1079, 26 Sup. Ct. Rep. 685; *Romeu* v. *Todd*, 206 U. S. 358, 368, 51 L ed. 1093, 1097, 27 Sup. Ct. Rep. 724 (United States Court for Porto Rico). But it has been *held* that the Supreme Court of the District of Columbia is a court of the United States within the meaning of U. S. Rev. Stat. § 714, U. S. Comp. Stat. 1901, p. 578. See Foster's Fed. Pr. 5th ed. § 2.

[7] Act of Oct. 3, 1913, subsection E.

§ 74. [1] Act of October 3, 1913, subsection F.

counted for to the revenue, because until the principal sums were paid it was considered that no income tax was in fact payable. It was held: that a creditor was authorized to prove for the balance of principal outstanding, with interest to the date of the judgment, without any deduction with respect to income tax; that from each payment on account of interest the tax should be deducted and paid to the Commissioner of Internal Revenue.[2] Where a trust deed provided for the payment of arrears of interest upon debentures before the principal, certain payments were made pending a foreclosure suit, and after a sale of the mortgaged property a final distribution decreed; it was held that the debenture-holders had no right to them so as to treat the payments made prior to the sale as capital, but that the entire amount which they received should first be applied to the satisfaction of their claim for interest and the tax deducted from the same.[3]

§ 75. **Payment of income tax by mortgagors.** Trustees under trust deeds, made by corporations, joint-stock companies or associations, and insurance companies, and corporations, joint-stock companies and associations when mortgagors, must deduct and pay to the collector the amount of the normal income tax from the income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, although such interest does not amount to $3,000.[1] Whether this applies to preferred stockholders or not may be an arguable question. According to Mr. Victor Morawetz, in the bill as pending in May, 1913, preferred stockholders were exempt.[2] It is not clear whether guarantors of interest secured by the mortgages of corporations must make such deduction and payment. Such deduction is not made from the interest upon the obligations of a State or any political subdivision thereof, or upon the obligations of the United States

[2] *Re Green, Ball & Ellis* (1904), W. N. 78, 105.

[3] *Re Queensland Land & Coal Co., Limited* (*Davis* v. *Martin*) (1903), unreported; Dowling on Income Tax, 7th ed., p. 463; explained in Annotated Statute and Digest, *infra*. But see *Smith* v. *Law Guarantee and Trust Society* [1904], 2 Ch. 569, 73 L. J. Ch. N. S. 733, 91 L. T. N. S. 545, which tends to support a contrary conclusion.

§ 75. [1] Act of October 3, 1913, Subsection D. It has been ruled that the tax should not be withheld at the source from interest paid or credited upon certificates of deposit or interest upon accounts of depositors with banks and trust companies.

[2] N. Y. Sun, May 8, 1913.

or its possessions;[3] nor from the income derived from the operation of a public utility under a contract entered into before the passage of the Act, in so far as such payment will impose a loss or burden upon a State, Territory or the District of Columbia, or a political subdivision of a State or Territory;[4] nor from any interest or coupon due to or owned by a corporation, joint-stock company or association, or insurance company.[5] According to the construction placed by the Treasury Department upon the statute, interest and coupons due to or owned by a nonresident alien are also exempt. The payer is entitled to require a receipt from the collector and it is the safer practice for him to take the same. An individual mortgagor must make such deduction where the interest exceeds $3,000 a year, but not otherwise.[6]

A covenant in the mortgage binding the mortgagor to pay the tax will be enforced when made prior to the passage of the statute, namely, October 3, 1913.[7] Under a former statute it was held, that the mortgagor was entitled to deduct the tax from the payment of coupons, although the defeasance clause of the mortgage was as follows: "Provided, always, that if the said railway company or their successors do well and truly pay to the said Haight, the said $100,000 on the days and times hereinbefore mentioned, together with the interest payable thereon, without *any* deduction, defalcation or abatement to be made of anything for or in respect of *any* taxes, charges or assessments whatsoever, then," &c.[8] No contract entered into after the act takes effect is valid in regard to any Federal income tax imposed upon a person liable to such payment.[9]

The regulations of the Treasury Department provide as follows:

"The debtor may appoint paying or fiscal agents to act for it in matters pertaining to the collections of this tax upon filing with the collector of internal revenue for its district a proper notice of the appointment of such agent or agents."

[3] Act of October 3, 1913, Subsection B.

[4] *Ibid.* Subsection G (a).

[5] *Ibid.* Subsection E.

[6] *Supra*, § 70.

[7] Act of Oct. 3, 1911, II. subsection G(c).

[8] *Haight* v. *Railroad Company*, 6 Wall. 15, 16; published in full at end of volume.

[9] Act of October 3, 1913, Subsection E.

When the coupon or order for the payment of registered interest is accompanied by a certificate of ownership signed by the owner of the bond, from which the coupon was detached, the proper deduction for payment of the tax must be made by the debtor or its paying agent in the United States, and by them alone. Such certificate should state the date of signature, and if any exemption is claimed the amount thereof. It should be signed by the claimant with his full name and contain his post-office and street address, "but duly authorized agents, trustees acting in a trust capacity, &c., may sign such certificates for the person for whom they act." In case an exemption is claimed, the act requires that if the beneficial owner "is a minor or insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making them under the penalties of this Act, that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete." [10] Such certificate, when made

[10] Act of October 3, 1913, Subsection E.

"Notice is hereby given that responsible banks, bankers and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached may either present the coupons with the attached certificates to the debtor or withholding agent for collection, or, at the option of the collecting agent, the certificates above referred to may be detached from such coupons and forwarded direct to the Commissioner of Internal Revenue at Washington, D. C., as hereinafter set forth; provided such bank, banker or collecting agent shall thereupon substitute for said owner's certificate and attach to said coupons, in lieu of said certificate of owner, a certificate signed by said bank, banker or collecting agent to whom said coupons may have been first presented for collection, in substantially the following form:

Form of certificate to be attached to interest coupons in cases where the collecting agent's certificate is substituted for the certificate of the owner. The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue at Washington, as prescribed by regulations.

"I (we) ———————do solemnly declare (name of collecting agent) that the owner of the ——————— bonds of the ——————— (name of debtor organization) from which were detached the accompanying interest coupons due ——————— (maturity), 191—, amounting to $——— has filed with me (us) a duly executed certificate filled up in accordance with Treasury regulations of Oct. 25, 1913, form No. ———, which certificate has been indorsed by me (us) as follows: 'Owner's certificate No. ——————— (name of collecting agency) (date), 191—,' and

by an individual citizen or resident of the United States, should be in substantially the following form:

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS STATING WHETHER OR NOT EXEMPTION IS CLAIMED UNDER PARAGRAPH C, SECTION 2, OF THE FEDERAL INCOME TAX LAW.

I do solemnly declare that I, ..., a citizen or resident of the United States, and residing at ....., am the owner of

in which the said owner claims, with respect to the income represented by said interest, the benefit of a deduction of $————, allowed under Paragraph C, Section II., of the Federal income tax law, the total exemption to which said owner now claims to be entitled thereunder being $————; and I (we) do hereby promise and pledge myself (ourselves) to forward the above described certificate executed by the owners as stated and dated ———, 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury regulations.

"————————.

(Signature of collecting agent.)

"Date ——, 191—, address ——."

The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection must be given the following endorsement by the collecting agents and should be made preferably with a rubber stamp:

Owner's certificate No. —.

(Nature of collecting agency) —— (give date of certificate) ——— 191—.

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent by whom the coupons are payable.

Certificates of owners for which collecting agents' certificates are substituted must be forwarded to the Commissioner of Internal Revenue at Washington by the collecting agency receiving them not later than the twentieth day of the month succeeding that in which said coupons were thus received for collection.

All banks, bankers or other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will be required to keep a complete record of all such transactions and substitutions of certificates, showing all certificates for which the collecting agents' certificates have been issued in lieu of the owners certificates.

This record should be kept by months and should give the following information: Serial number of item received; date received; name of person from whom received; address; name of debtor corporation; class of bond from which coupons were cut: face amount of coupons collected; deductions from tax claimed by owners under Paragraph C of Federal income tax law; amount of interest collected.

Until further ruling by this department, the banks, bankers, and other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan, will not be required to secure a license from the Treasury Department for being permitted to make such substitutions of their own certificates for those of the owners, provided these regulations are strictly complied with.

The permission to banks, bankers, and collecting agents to substitute their own collecting agents to substitute their own certificates under the above regulations for those of the owners of the bonds, &c., will extend to responsible banks, bankers, and collecting agents in foreign countries, as well as to those of the United States." T. D. Nov. 28, 1913.

A certificate of ownership is not required upon the payment of interest or coupons due under bonds or obligations of States, counties, cities, or other political subdivisions of the United States. T. D. Nov. 1892.

$..... bonds of the denominations of $..... each, Nos. .....
.....
.....
of the .....
(Give name of debtor.)
known as ..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $..... of registered interest.

I {do / do not} now claim, with respect to the income represented by said intertst, the benefit of a deduction of $..... allowed under paragraph C, Section II, of the Federal income-tax law.

Name .....
Address .....

Date ....., 191... [11]

Where coupons or interest orders, presented for payment, represent the interest on bonds, or other similar obligations, owned by a partnership, they shall be accompanied by a certificate of ownership which shall be signed either in the firm's name by one member of the firm or by each individual member of the partnership, and the normal tax shall be withheld by the debtor with respect to the income represented by said interest.

Said certificate of ownership shall be in substantially the following form:

FORM OF CERTIFICATE TO BE FILLED OUT AND SIGNED BY MEMBERS OF PARTNERSHIPS.

The following certificate should be used when coupons or interest orders are presented by citizens or residents of the United States for collection of interest on bonds, or other similar obligations, owned by the partnerships of which they are members:

I, ..., a member of the firm or partnership of ..... of ..... and residing at .....
(Give full address.)

[11] Before March 31, 1914, the numbers of the bonds or other obligations need not be inserted in the certificate. T. D. Nov. 28, 1913.

do solemnly declare that the said partnership is the owner of $.....
bonds of the denomination of $..... each, Nos. .....
.....
of the .....
(Give name of debtor.)
known as ..... bonds, from which were
(Describe the particular issue of bonds.)
detached the accompanying interest coupons, due ..... 191.., amounting to $....., or upon which there matured ..... 191.., $.....
of registered interest, and that the name and address of said firm or partnership, and the names of the individual members thereof, and their places of residence, are as follows:

Names of partners:	Address:
.....	.....
.....	.....
.....	.....
.....	.....

Name of partner signing: .....
Of firm of: .....
Address: .....
Date ..... 191..... [12]

Any temporary certificates relating to bonds, for which certificates of ownership shall not have been substituted with the Debtor, shall, on or before March 1, 1914, be delivered to the collector of internal revenue."

"All forms of certificates herein provided for shall be 8 inches wide and $3\frac{1}{2}$ inches from top to bottom, and printed on paper corresponding in weight and texture to glazed bond paper, 17 by 28, about 26 pounds to the ream of 500 sheets, or white writing paper 21 by 32, about 32 pounds to the ream of 500

[12] In the case of a foreign partnership, all or some of the members of which are non-resident aliens, the certificate should follow the above form to and including the words "registered interest," and then conclude:
"or is the owner of .....
.....
(Property or investments.)
upon which there has accrued.....
.....191.., $.....
of income, and that all the members of said firm or partnership, except
.....
(Give name and address of partners not non-resident aliens.)
are non-resident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any of its possessions, except those named above, has any interest in said bonds, coupons or interest.
'Name of partner signing.....
....., of the firm of .....
....., full address .....
Date..... 191..."
According to the Treasury Regulations, upon the filing of such a certificate no part of the income should be withheld at its source.

sheets, and the person or corporation first receiving coupons or interest orders for collection shall write or stamp his or its name and address and date on the back of said certificates."

When the coupon or order is not accompanied by such a certificate of ownership, the first bank, trust company, banking firm or individual, or collecting agency receiving the coupon for collection or otherwise, must deduct and withhold the tax and must attach to the coupon or order his or their own certificate giving the name and address of the owner, or, if the owner is unknown, of the person presenting the same, together with a description of the coupon, setting forth the fact that he or they, as the case may be, are withholding the tax upon the same. Such certificate must be in substantially the following form:

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS WHEN NOT ACCOMPANIED BY CERTIFICATE OF OWNERS.

I, ..., the .....
(Name.) (Official position.)
of the ....., of ....., do solemnly
(Bank or collecting agency.) (Address.)
declare that said ..... has (or have) purchased or ac-
(Collecting agency.)
cepted for collection the accompanying coupons or interest orders amounting to $....., and which represent interest matured on $.....
of the bonds of the ..... and that .....
(Name of debtor.) (Collecting agency.)
received said coupons or orders for registered interest from
..... of ....., and that
(Name of party from whom received.) (Address of said party.)
no certificate of ownership accompanied said coupons or interest orders, and ..... hereby acknowledges responsibility of
(Collecting agency.)
withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Name.....
(Collecting agency.)
By.....
(Signature of officer duly authorized to sign and his official position.)
Address.....
(Give full address.)

Date ..... 191...

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency or person withholding the tax with full name and address."

One such certificate may be attached to several coupons received from the same person. The debtor should then pay the coupon and interest in full without any deduction of the tax and should deliver to the collector of internal revenue the certificate last described in lieu of payment of the tax. Should the collecting bank or agency fail to pay the tax to the United States, in spite of the language of the treasury regulations, it is not impossible that the courts might hold the debtor still liable for the amount thereof. It will consequently be safer when no exemption is claimed for the debtor to refuse to pay the interest without requiring a receipt of the payment of the tax.[13]

"Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest, and to whom the certificates above provided for are delivered, should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity."

"A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds until there shall be filed with said debtor or its fiscal agent (and not later than thirty (30) days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed as follows:

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2 of the Federal income-tax law, or

By corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or

[13] See Act of October 3, 1913, Subsection J.

exempt from taxation, as provided in paragraph G, subdivision A, of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such."

Where the interest to be paid is registered and exemptions are claimed, the same form of certificate is prescribed as in the case of coupons, but it must be filed with the debtor at least five days before the due date of such interest.

"The tax shall not be withheld on coupons or registered interest maturing and payable before March 1, 1913, although presented for payment at a later date."

"The debtor or paying agents shall deliver all certificates, with the list of names and addresses of those for whom the tax has been withheld, showing amounts, as required by law, to the *collector of internal revenue* for their district on or before the twentieth day of the month succeeding that in which said certificates were received by them."

§ 76. Payment of tax upon income derived from foreign countries. The statute provides that "likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption

and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph." [1]

The foregoing provisions, to which reference is made, are described in the preceding section of this work. "All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court." [2]

The regulations of the Treasury Department upon the subject provide as follows:

"The provisions for collection of the tax on foreign obligations set forth in this section of the regulations includes the interest upon all foreign bonds, even though the coupons may be at the option of the holder, payable in the United States as well as in some foreign country."

Such licenses continue in force until revoked. Application for such licenses shall be made to the collectors of internal revenue for district in which they are engaged in business and may be issued without cost to such persons as the commissioner may approve upon their filing with the collector the bond herein provided for. "All persons in making application to the collector of internal revenue for such licenses shall register their names and addresses and state the nature of the

§ 76. [1] Act of October 3, 1913, Subsection E. [2] *Ibid.*

business in which they are engaged.[3] Such application for the license, accompanied by a proper surety bond when both have been approved by the collector, will be considered a sufficient compliance with the law to enable the persons making application to do business until February 1, 1914, without incurring the penalties provided by law for failure to procure the required license."

[3] The license should be in the following form:

"United States Internal Revenue:

Application for license for collection of income from foreign countries:

State of County of

The undersigned (name) (office) of (name of person, firm or corporation), being duly sworn according to law, declares that on and after the day of (191) he intends to engage in the business of collecting foreign income payments of interest or dividends by means of coupons, checks, or bills of exchange. The aggregate amount of annual collections of such foreign income at the principal and branch offices is estimated at . The location of the principal and branch offices is as follows:

Principal office:

Branch offices:

(If a firm, state names of members)

Said person, firm or corporation is now engaged in business as —— and desires to conduct the business of collecting foreign income at the above address or addresses and hereby makes application for the license required to be secured by persons, firms or corporations engaging in the business of collecting income from foreign countries under the provisions of paragraph E of section 11 of the income tax law of October 3, 1913, and I (we) hereby promise and pledge myself (ourselves) to comply strictly with the provisions of said law and the rules and regulations of the Treasury Department which have been or may hereafter be issued in respect to the collection and payment of such income.

(Signed) ——

For —— (name of firm or corporation).

Sworn to before me this —— day of —— 191—.

The collector of internal revenue upon receipt of such application shall satisfy himself that the person, firm or corporation making application is considered to be of good character and business standing and may require that he or they shall be able to show a financial rating in one or more of the recognized mercantile agencies of the United States equal to at least one-tenth of the estimated amount of annual collections of foreign income as stated in the application.

The collector of internal revenue having thus satisfied himself of the business and financial reliability of the person, firm or corporation making application for license may issue the license without requiring a bond for the faithful performance of duty and compliance with the law and regulations.

In cases where the person, firm or corporation shall fail to satisfy the collector of internal revenue of his or their business or financial reliability the collector may refuse to issue license or may issue a license upon the applicant filing a surety bond satisfactory to the Commissioner of Internal Revenue for a penal sum equal to 2 per cent. of the estimated amount of collections stated in the application, the minimum penal sum, however, to be $1,000 and the maximum not in excess of $100,000.

The bond when required shall be executed in duplicate, one of which shall be retained in the office of the collector of internal revenue with whom the bond is filed and the other

"All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal revenue officers."

"*By whom tax is withheld.* The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise shall withhold therefrom the normal tax of 1 per cent, and will be held responsible therefor. He (the licensee) shall thereupon indorse or stamp thereon the words 'income tax withheld by' (giving his or their name, address, and date), which shall be forwarded by the collector to the Commissioner of Internal Revenue at Washington.

The form of license to be issued shall be as follows:

TREASURY DEPARTMENT.
Office of the Commissioner of Internal Revenue.
License for collection of foreign income.

....., located and doing business at ....., and engaged in the business of....., having made application in accordance with the provisions of section 11 of the act of October 3, 1913, and the regulations made in pursuance thereof, is hereby licensed to accept for collection coupons, checks and bills of exchange for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations and for the dividends upon stock of foreign corporations, foreign joint stock companies or associations, or foreign insurance companies engaged in business in foreign countries, from ....., 191.., until revoked.

"This license will not be valid until countersigned by the collector of internal revenue for the district in which issued.

Countersigned:
(.....) collector ..... (district).
Commissioner of Internal Revenue.

This license, made up in the form of bound books containing fifty each, with appropriate stubs, will be furnished in blank to the collectors of internal revenue with the facsimile signature of the Commissioner of Internal Revenue thereof, and shall not be valid until countersigned by the collector of internal revenue by whom issued.

License without cost

"This license may be issued without cost to the persons to whom issued and shall continue in full force until revoked. Failure to give or renew the bond in case where a bond is required will automatically revoke the license.

"In cases where licenses are issued without bond the collector shall at stated yearly periods inquire into and satisfy himself of the financial responsibility of all licensees.

"When any person, firm or corporation has branch offices and desires to collect said foreign interest or dividend income through said branch offices the application for license or licenses shall be made (and bond furnished when a bond is required) by the person, firm or corporation through its principal office for its branch office or offices.

"The bond in such cases shall be based on the total amount of such foreign business transacted by both the home office and its branch office or offices.

"This application for licenses shall be made (and bond furnished when bond is required) to the Collector of Internal Revenue for the district in which the principal or some office is located. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal and if the requirements of the bureau or internal revenue are complied with to the satisfaction of the said

shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., makes it impracticable to make said indorsement as above, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

List of tax collections on foreign items. Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the Collector of Internal Revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted and from what source collected.

Certificates to secure tax exemption on foreign items. In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the deductions allowable under paragraph C, Section II. of the Federal income-tax-law, such individual shall be permitted to avail himself of the deduction claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used and in such instances no tax shall be deducted.

collector, then said collector shall certify this fact to the Collector of Internal Revenue in the district of which the branch office for which the license is desired is located, and the collector to whom this certification is made shall thereupon issue a license as provided herein to such branch office.

"No bond shall be required in any case for the month of December, 1913, but the required license may be issued by collectors of internal revenue immediately upon receipt of the blank licenses in all cases where the applications for licenses which may have been filed shall have been duly approved.

"The bond, if required, must be filed for the calendar year 1914 and for each calendar year thereafter.

"All bonds must be renewed or new bonds furnished on or before January 1 of each successive year.

"The applications for these licenses and the stubs of the licenses issued shall be retained and preserved in the offices of the collectors of internal revenue." T. D. Nov. 28, 1913.

In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid to the Collector of Internal Revenue for his district not later than the 20th of the month next succeeding that in which said items were received, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse, or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon."

§ 77. Payment by guardians, trustees, executors, administrators, agents and all persons acting in fiduciary capacity. Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, before paying any income to their respective individual beneficiaries, must deduct and pay to the collector the normal income tax at its source, unless the amount collected for the respective benefit of the last is not fixed and determinable or does not exceed $3,000 for any taxable year.[1] Mortgagors and the obligors of bonds or similar obligations, when corporations, and trustees under deeds of trust to secure the payment of indebtedness by

§ 77 [1] Act of October 3, 1913. Subsection E.

"Guardians, trustees, executors, administrators, agents, receivers, conservators and all persons, corporations or associations acting in any fiduciary capacity hereinafter referred to and known as the fiduciary, who hold in trust an estate of another person or persons, shall be designated as the 'source' for the purpose of collecting the income tax and by filing the following notice with other debtors or withholding agents, said fiduciary shall be exempt from having any income due to them as such, withheld for any income tax by any other debtor or withholding agent.

"Other debtors or withholding agents upon receipt of this notice shall refrain from withholding any part of such income from said fiduciary and will not in such case be held liable for normal tax of 1 per cent. due thereon. The form of notice to be filed with the debtor or withholding agent by the fiduciary shall be substantially as follows:

"The following form of certificate should be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his report, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source:

"I (we) do solemnly declare that I (we) .....

(Name fiduciary.)

am (are) the duly authorized .....

.....

(Indicate in what capacity acting.)

for the beneficiaries of the estate or trust of ....., which estate or trust is entitled to the

corporations, must pay such normal income tax out of the interest thereunder, although the same is less than $3,000. The disbursers, collectors, vendors, and dealers purchasing otherwise than from a banker or other dealer therein, coupons, checks or bills of exchange, for or in payment of dividends upon the stock or interest upon the obligations of foreign corporations, associations and insurance companies engaged in business in foreign countries, must deduct, withhold and pay the normal income tax therefrom, although the same is less than $3,000, unless the owner is a corporation, joint-stock company or association, or an insurance company.[2]

§ 77a. **Supplementary regulations as to payment at the source.** Any member of a partnership, who is entitled to a deduction (under Paragraph C, Section II, of the Income Tax Law) of his pro rata share of the tax which may be withheld at the source on interest on bonds owned by his copartnership, as above, may claim such deduction or allowance when he shall make his individual income tax return for the year in which said deduction at the source was made.

"If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organiza-

income from $.....bonds of the denomination of $..... each, Nos. ..... of the .....
(Give name of the debtor.)
known as .....
(Describe the particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due ...., 191.., amounting to $.... ....., or upon which there has matured ....., 191.., $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued .....191.., $.....of income.

"Acting for and in the capacity as stated herein, I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the law, of withholding and paying the income tax due, for which I (we) may be liable, and acting in said fiduciary capacity as stated herein, I (we) do hereby claim exemption from having the normal tax withheld from said income. Or, "Acting for and in the capacity herein stated, I hereby declare that I (we) do not now claim any exemption from having the normal tax of 1 per cent. withheld from said income by the debtor at the source."

"Name .....
(Capacity in which acting.)
"Address .....
Date .....191.."

When the fiduciary files such a certificate making no personal claim for exemption, the debtor is the source which withholds the normal tax, and the fiduciary after the deduction by the debtor is not required again to deduct the same. T. D. Nov. 28, Dec. 9, 1913.

[2] *Ibid.*

tions, associations, fraternities, &c., which are either taxable or exempt from taxation as provided in paragraph G subdivision A of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

Such certificate shall be substantially in the following form:

Certificate to be furnished by organizations not subject to tax on interest at source.

CERTIFICATE TO BE FURNISHED BY ORGANIZATIONS NOT SUBJECT TO TAX ON INTEREST AT SOURCE.

I, ..., the ..... of the
(Give name.) (Give official position.)
..... a ..... of .....
(Name of organization.) (Character of organization.) (State.)
located at ..... do solemnly declare that said
(Post-office address.)
..... is the owner of $.....
(Give name of organization.)
bonds of the denomination of $..... each, Nos. .....
.....
..... of the .....
(Give name of debtor.)
known as ..... bonds,
(Describe particular issue of bonds.)
from which were detached the accompanying coupons, due ..... 191..
amounting to $....., or upon which there matured ..... 191..
$..... of registered interest, and that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Name .....
(Official position.)
Of .....
(Name of organization.)
Address .....
(Post office.)

Date ..... 191..

This certificate must be signed by the full name of the organ-

ization, stating its place of business, and by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, together with the date of execution."

"This tax will not be deducted from the income which may be derived from interest on bonds, mortgages, equipment trusts, receivers' certificates, or other similar obligations of which the bona fide owners are citizens of foreign countries residing in foreign countries: *Provided,* that such interest coupons, or in case of wholly registered bonds, the orders for the payment of such interest, shall be accompanied by duly certified certificates, hereinafter provided for, to cover the cases of foreign and non-resident owners of bonds and other securities.

Unless such proof of foreign ownership is duly furnished, the normal tax of 1 per cent shall be deducted as herein provided.

Such certificates shall be in substantially the following form:

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS, DETACHED FROM BONDS OR OTHER OBLIGATIONS OWNED BY THOSE WHO ARE BOTH CITIZENS OR SUBJECTS, AND RESIDENTS OF FOREIGN COUNTRIES.

I do solemnly declare that I am not a citizen or resident of the United States of America, but a subject (or citizen) of ....., and that I as the owner of $..... bonds of the denominations of $..... each, Nos. .....
..... of the ..... known as
(Give name of debtor corporation.)
..... bonds,
(Describe particular issue of bonds.)
from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $....., of registered interest, and that being a nonresident foreigner, I am exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any or its possessions, has any interest in said bonds, coupons, or interest.

Signature of owner of bonds .....
(Give full name.)

Date ....., 191...

Address .....
(Give full post office address.)

The certificate to be furnished by foreign organizations not engaged in business in the United States shall be in substantially the following form:

I, ..., the ..... of the
(Name.) (Official position.)
..... a ..... of
(Name of organization.) (Character of organization.)
....., located at ..... do solemnly
(Country.) (Post office address.)
declare that said ..... is a foreign organi-
(Name of organization.)
zation, not engaged in business in the United States, and is the owner of $..... bonds of the denomination of $..... each, numbers of ..... of the .....
(Name of debtor.)
known as ..... bonds, from which
(Describe particular issue of bonds.)
were detached the accompanying coupons, due ....., 191..., amounting to $....., or upon which there matured 191..., $..... of registered interest, or is the owner of ..... upon which there are accrued
(Property or investment notes.)
....., 191..., $..... of income, and that under the provisions of the income tax law of October 3, 1913, said organization being a foreign organization, said interest or income is exempt from taxes collectible at the source, which exemption is hereby claimed.

Date ....., 191...
Name ..... Address .....
..... of .....
(Official position.) (Name of organization.)

The form of certificate by partnerships, one or more of the members of which are alien non-residents, is set forth in § 70.

"*Temporary provision.* In view of the fact that the time required for the interpretation of the law and preparation and issuance of these regulations brings the date so near November 1, and that many coupons payable upon that date are already in transit without the prescribed certificates attached, with a desire to cause as small an amount of inconvenience as possible to bondholders and general business as may be compatible with the provisions of the law and of these regulations, the following temporary provision is made:

On November 1, 1913, and for fifteen days thereafter, coupons presented to a debtor need not be accompanied by certificates in any of the forms hereinbefore described, provided

that such coupons are accompanied by a certificate substantially in the following form:

FORM OF TEMPORARY CERTIFICATES WHICH MAY BE USED ONLY PRIOR TO NOVEMBER 16, 1913, SUBJECT TO SUBSTITUTION.

I (we) hereby certify that I am (we are) lawfully entitled to present for payment the accompanying coupons or interest orders amounting to $.....(giving amount) representing interest matured on the following bonds ..... (giving name of debtor and designating the description, style, and numbers of the bonds); that said coupons or interest orders came into my (our) possession unaccompanied by a certificate of ownership of said bonds, if any of the forms required by the regulations of the United States Treasury Department; and that the name and address of the owner of such bonds are as follows: ..... (give name and address of owner; if impossible to do this, so state).

Name of person, firm, or corporation presenting coupons:

.....

Address.....

On or before February 1, 1914, certificates of the ownership of any of the bonds upon which was collected the interest referred to in such temporary certificates, in any of the forms above set forth, may be delivered to the debtor; and said debtor may thereupon return any sum withheld to which the owner of such bonds may be entitled under the law and regulations upon the facts disclosed by such ownership certificates.[1]

[1] The temporary certificate is contained in the form known as 1005. It was originally intended for use prior to November 16, 1913, but its use has been extended until January 15, 1914 in cases where the coupons, to which it shall relate, shall have been received from a foreign country by a person, firm or corporation licensed to deal in coupons under the statute. T. D. Nov. 28, 1913. The time during which forms numbers 1000–1004 may be used has been extended to Jan'y. 15, 1914. T. D. Dec. 9, 1913.

"The required monthly return shall give a list of all coupon or interest payments made on which the normal tax of 1 per cent. was deducted and withheld and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax and the amount of tax withheld.

"The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required, in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or similar obligations of corporations, joint stock companies, or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which the annual list return is made.

"All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds.

"Until further ruling on this subject by this Department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent when the owners of the bonds are not subject to having the normal tax withheld at the source, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for his or its district on or before the 20th day of the month succeeding that in which said certificates of ownership were received by him or it." T. D. Dec. 11, 1913.

On December 13, 1913, the following form was issued:

"The certificate to be furnished by foreign organizations engaged in business in the United States shall be in substantially the following form:

Form 1,018.

I, ... (give name) the ..... (give official position) ..... (name of organization,) a ..... (character of organization,) of ..... (country,) located at ..... (Post Office address,) do solemnly declare that said ..... (give name of organization) is a foreign organization engaged in business in the United States, and is the owner $..... of bonds of the denomination of $..... (numbers, &c.,) of the ..... (give name of the debtor) known as ..... (describe particular issue of bonds,) bonds from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ...., 191.., $..... of registered interest, or is the owner of ..... (property or investments) upon which there was accrued ....., 191.., $..... of income.

Under the provisions of the income tax law of Oct. 3, 1913, the said organization is subject to the normal tax of 1 per centum per annum upon the amount of net income accruing from business transacted and capital invested within the United States, for which tax it will make its return in due course but it hereby claims exemption from having the said normal tax of 1 per cent. on said income withheld at the source.

Name .....

Official position .....

Name of organization .....

UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX WITHHELD AT THE SOURCE.

Filed by .....
(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we) ....., of .....,
(Name.) (State address in full.)
the duly authorized withholding agent of .....,
(State name of debtor organization.)
located at ....., do solemnly
(Address in full.)

swear (or affirm) that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191..., on the ..... Bonds (or other similar obligations)
(Describe the particular issue of bonds.)
of the ....., and there are herewith
(Name of debtor organization.)
inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $ ....., of the bonds described.

Name.	Address in full.	Amount of Income.	Amount of Exemption Claimed.	Amount of Income on Which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.
.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Totals for month		$	$	$	$
Amount of tax remitted herewith (if any) to Collector					$.....

To .....
Collector.
District of .....
.....
(Address.)

Sworn to and subscribed before me this ..... day of ....., 191... } Signed: .... } (Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

CHAPTER VII.

COLLECTION OF THE TAX.

§ 78. **Demand.** The Revised Statutes provide that "Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects." [1]

"It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all collected by him." [2]

"Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month." [3]

Similar provisions of the statute in question do not describe this liability of interest as a penalty. They provide that "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per

§ 78. [1] U. S. R. S., § 3172, as amended by Act of October 3, 1913, II, subsection I.

[2] U. S. R. S., § 3183.

[3] U. S. R. S., § 3184.

centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons." [4]

This notice and demand is necessary in order to entitle the Government to a lien upon the property, and to enable it to distrain for the tax and to impose a penalty upon the taxpayer.[5]

§ 79. **Penalties for default in payment.** The Act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000." [1] The Act further provides: that, as regards both individuals [2] and corporations, joint-stock companies or associations, and insurance companies,[3] "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became," and in the case of corporations, joint-stock companies or associations, and insurance companies, "becomes" [4] "due, except from the estates of insane, deceased, or insolvent persons," the last clause being contained only in that part of the statute which applies to individuals. It will be observed that this addition of 5 per centum, with interest at the rate of 1 per centum a month, is not described in the statute as a penalty.

The Revised Statutes provide, in regard to Internal Revenue taxes: "When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be

[4] Act of October 3, 1913, II, subsection E.

[5] *U. S.* v. *Bristol*, 20 Fed. 378. See *infra*, § 80.

§ 79. [1] Act of October 3, 1913, Subsection F.

[2] *Ibid.* Subsection E.

[3] *Ibid.* Subsection G (c).

[4] *Ibid.* Subsection G (c).

demanded: *Provided,* That notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law." [5]

A similar section has been held constitutional.[6]

Where the refusal to pay taxes was induced by inconsistent Department rulings after suit for the statutory penalty was pending, the court refused to allow interest to the Government in a suit for the collection of the tax.[7]

In a suit in equity to recover the amount of a tax imposed by a State statute, with interest at the rate of twelve per cent until paid, the defendant admitted part of the tax to be due, and paid the amount admitted into court, with twelve per cent interest. The sum so paid was greater than the interest then accrued upon the whole tax for which suit was brought. It was held that the amount paid into court should be applied, in accordance with the defendant's contention, to the principal and interest admitted to be due, and further, that on the remainder of the tax decreed to be due, the interest should be computed at the rate of twelve per cent, until the date of the decree and thereafter only at six per cent.[8]

§ 80. **Liens.** The Revised Statutes provide that "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to

[5] U. S. Rev. Stat. § 3185, U. S. Comp. Stat. 1901, p. 2072.

[6] *Doll* v. *Evans,* 9 Phila. 364.

[7] *U. S.* v. *Dollar Savings Bank,* 15 Int. Rev. Rec. 193, Fed. Cas. No. 979.

[8] *Massachusetts* v. *Western Union Tel. Co.* 141 U. S. 40, 35 L. ed. 628, 11 Sup. Ct. Rep. 889.

said person."[1] No lien arises until after assessment, notice, demand,[2] and refusal to pay.[3] The demand must specify the amount of the tax.[4] It should be in writing.[5] The validity of such lien is not affected by the failure to comply with a state law which requires all liens to be recorded.[6] This lien is not displaced by a judicial sale of the property under a pre-existing judgment or for the foreclosure of a pre-existing mortgage or other lien,[7] except possibly one for State or Federal taxes previously imposed. The United States are not estopped by any statements of the collector or other Federal officer that the property is not subject to their lien.[8] The proceedings to enforce the lien are described hereafter.[9]

§ 81. **Distraint.** The Revised Statutes provide that "If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: *Provided,* That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars, the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not

§ 80. [1] U. S. Rev. Stat. § 3186, as amended by Act of March 1, 1879, chapter 125, § 3. 20 Stat. at L. 327; 1 U. S. Rev. Stat. Supp. 2d ed. p. 226, U. S. Comp. Stat. 1901, p. 2073. On general question of priority of claims for taxes against the assets of a debtor, see note in 29 L.R.A. 278.

[2] *U. S.* v. *Pacific R. R.* 1 McCrary, 1, 1 Fed. 97. See s. c. 4 Dill. 66, Fed. Cas. No. 15, 983; s. c. 4 Dill. 71, Fed. Cas. No. 15, 984; *U. S.* v. *Allen*, 14 Fed. 263; *Brown* v. *Goodwin*, 75 N. Y. 409.

[3] *Brown* v. *Goodwin*, 75 N. Y. 409.

[4] *U. S.* v. *Pacific R. R.* 4 Dill. 66, 71, Fed. Cas. Nos. 15,983, 15,984.

[5] *U. S.* v. *Allen*, 14 Fed. 263, 267.

[6] *U. S.* v. *Snyder*, 149 U. S. 210, 37 L. ed. 705, 13 Sup. Ct. Rep. 846; *Arnson* v. *Murphy*, 109 U. S. 238, 27 L. ed. 920, 3 Sup. Ct. Rep. 167.

[7] *Osterberg* v. *Union Trust Co.* 93 U. S. 424, 23 L. ed. 964. See, however, Department Ruling of January 25, 1866, I. R. R. 37.

[8] *Alkan* v. *Bean*, 8 Biss. 83, 23 Int. Rev. Rec. 351, Fed. Cas. No. 202.

[9] *Infra*, § 67.

greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt." [1] This mode of collection is constitutional.[2] State exemption laws do not apply to proceedings to collect debts due to the United States.[3]

"In such cases of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.[4]

"All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint, for the tax due as aforesaid.[5]

"When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted

§ 81. [1] U. S. Rev. Stat. section 3187, U. S. Comp. Stat. 1901, p. 2073.

[2] *Springer* v. *U. S.* 102 U. S. 586, 26 L. ed. 253; quoted *supra*, § 20.

[3] *U. S.* v. *Howell*, 9 Fed. 674.

[4] U. S. Rev. Stat. § 3188. See *Hartman* v. *Bean*, 99 U. S. 393, 25 L. ed. 455.

[5] U. S. Rev. Stat. § 3189.

at the post-office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days." [6]

"When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expense of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon." [7]

"When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees." [8] The debt originally due by virtue of the assessment of the tax is merged in the tax sale and the purchase thereof, to the extent at least of the purchase price.[9]

"In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if prior to the sale payment

[6] U. S. Rev. Stat. § 3190.
[7] U. S. Rev. Stat. § 3192.
[8] U. S. Rev. Stat. § 3191.
[9] *U. S.* v. *Wilson*. 118 U. S. 86, 88, 89.

of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in the case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same." [10]

"In all cases of sale, as aforesaid, the certificate of such sale shall be *prima facie* evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all the right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt." [11]

"When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support there-

[10] U. S. Rev. Stat. § 3193. [11] U. S. Rev. Stat. § 3194.

of, shall, by warrant on the Treasury, cause the same to be paid to the applicant." [12]

"When goods, chattels, or effects, sufficient to satisfy the tax imposed upon any person, are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate." [13]

"The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice.

"The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate to be seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue.

"At the time and place appointed, the officer making such seizures shall proceed to sell the said estate at public auction, offering the same at a minimum price including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars.

"When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid.

"If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased

[12] U. S. Rev. Stat. § 3195. See also *Brown* v. *Goodwin*, 75 N. Y. 409.

[13] U. S. Rev. Stat. § 3196.

by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

"And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situated, and shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deeds to the Commissioner of Internal Revenue.

"And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

"And it is hereby provided, that all certificates of purchase, and deeds of property purchased by the United States under the Internal Revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

"And it is hereby further provided, that for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns." [14]

"Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time here-

[14] U. S. Rev. Stat. § 3197, as 1 U. S. Rev. Stat. Supp. 2d Ed. 227, amended by Act of March 1, 1879, U. S. Comp. Stat. 1901, p. 2077. 20 Stat. at L. 227, § 3, chap. 125;

after provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the state in which such real estate is situated upon the subject of sales of real estate under execution." [15]

"The deed of sale given in pursuance of the preceding section shall be *prima facie* evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto." [16]

The deed is not *prima facie* evidence of the facts which the statute does not require to be included in its recitals, but which are necessary to the validity of the sale: [17] such as the notice and the assessment of the tax, the demand of payment, the failure to find personal estate to satisfy the distress warrant and the notice of seizure of the real estate.[18]

Where two lots of real estate were occupied as a homestead with a house upon one lot and a barn on the other, although they had been assessed separately for state taxation, it was held that their sale in one parcel for income taxes was not void, but was properly made within the discretion of the collector, although the state statute directed that such lots should be sold separately.[19]

"Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the state in which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district." [20]

"Any person whose estate may be proceeded against as afore-

[15] U. S. Rev. Stat. § 3198.
[16] U. S. Rev. Stat. § 3199.
[17] *Fox* v. *Stafford*, 90 N. C. 296; *Brown* v. *Goodwin*, 75 N. Y. 409.
[18] *Brown* v. *Goodwin*, 75 N. Y. 409, 415.
[19] *Springer* v. *U. S.* 102 U. S. 586, 26 L. ed. 253.
[20] U. S. Rev. Stat. § 3200.

said shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment." [21]

"The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum." [22]

"It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated." [23]

"When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption." [24]

"Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient

[21] U. S. Rev. Stat. § 3201.
[22] U. S. Rev. Stat. § 3202.
[23] U. S. Rev. Stat. § 3203.
[24] U. S. Rev. Stat. § 3204.

to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid." [25]

"The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary." [26]

"The gross amount of all taxes and revenues received or collected by virtue of this Title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: *Provided,* That in districts, where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper Government depositary, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month." [27]

"When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation." [28]

"Whenever a collector has on any list duly returned to him

[25] U. S. Rev. Stat. § 3205.
[26] U. S. Rev. Stat. § 3206.
[27] U. S. Rev. Stat. § 3210.
[28] U. S. Rev. Stat. § 3225 (U. S. Comp. Stat. 1901, p. 2088).

the name of any person not within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection-district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him." [29]

§ 82. Suits by the United States to collect the income tax. The United States is not confined to the summary remedies granted by the Revised Statutes, but may also collect the income tax and the penalties therein imposed by an action at law or a suit in equity.[1] This may be by either a suit to foreclose the lien; [2] or an action to collect the tax, interest, and penalties.[3] The collection of the tax with interest and the collection of the penalties may be by separate suits.[4]

"No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided,* That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.[5]

"It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals,

[29] U. S. Rev. Stat. § 3209.

§ 82. [1] U. S. Rev. Stat. § 3213.

[2] U. S. Rev. Stat. § 3207, *infra,* § 83.

[3] U. S. Rev. Stat. § 3213, *infra,* § 68.

[4] *U. S.* v. *Dollar Savings Bank,* 15 R. I. R. 193.

[5] U. S. Rev. Stat. § 3214.

respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws." [6]

"All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the collectors as internal taxes are required to be paid." [7]

"It shall be lawful for any court in which any suit or criminal proceeding arising under any internal revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney." [8]

§ 83. Suits by the United States to foreclose liens for taxes. A suit by the United States to foreclose their lien for taxes, although less expeditious than a statutory sale, may be more prudent when the amount of the tax is large, since a judicial sale under the decree of a court will produce higher bids on account of the greater security on his title which the purchaser thus obtains.

The Revised Statutes provide that "In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a District or Circuit Court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree

[6] U. S. Rev. Stat. § 3215.
[7] U. S. Rev. Stat. § 3216.
[8] U. S. Rev. Stat. § 3231.

a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States." [1] Other suits to enforce liens by the United States can ordinarily be brought only in the District Courts.[2]

§ 84. Suits in personam by the United States to collect internal revenue taxes. The United States may sue in *indebitatus assumpsit* to collect an income tax or any other internal revenue tax.[1] Such a suit may be brought even where no assessment has been made.[2]

Such a suit may be brought in case an assessment has been made and paid when the collector subsequently discovers that the first assessment was inadequate.[3] Such an action may be brought after the statutory time for the assessment has elapsed.[4] Laches will not bar such an action by the United States,[5] at least unless it is shown that the delay has prejudiced the defendant through the loss of evidence material to the defense.[6]

Where the United States sues without any assessment, the burden of proof rests upon the plaintiff; but where an action was brought to collect income taxes for a period of ten years, the court denied the defendant a bill of particulars on the ground that he knew the details of his own income although he swore that he was "ignorant of the particulars of the claim against him." [7]

The Supreme Court said: "An assessment is not required by the act, or, if made, conclusive upon either party, and that in

§ 83. [1] U. S. Rev. Stat. 3107, U. S. Comp. Stat. 1901, p. 2081.

[2] 36 Stat. at L. 1087, § 24. *Cf. Coffey* v. *U. S.* 116 U. S. 427, 29 L. ed. 681, 6 Sup. Ct. Rep. 432.

§ 84. [1] U. S. Rev. Stat. § 3213.

[2] *King* v. *U. S.* 99 U. S. 229, 25 L. ed. 373; *Dollar Savings Bank* v. *U. S.* 19 Wall. 227, 22 L. ed. 80; *U. S.* v. *Tilden*, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519.

[3] *King* v. *U. S.* 99 U. S. 229, 25 L. ed. 373.

[4] *U. S.* v. *Tilden*, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519; *Little Miami, etc. R. R. Co.* v. *U. S.* 108 U. S. 277, 280, 27 L. ed. 724, 725, 2 Sup. Ct. Rep. 627; *U. S.* v. *Thompson*, 98 U. S. 486, 25 L. ed. 194; *U. S.* v. *Beebe*, 127 U. S. 338, 32 L. ed. 121, 8 Sup. Ct. Rep. 1083; *U. S.* v. *Harley*, 130 U. S. 263, 32 L. ed. 968, 9 Sup. Ct. Rep. 485; *U. S.* v. *Dalles Military Road Co.* 140 U. S. 599, 35 L. ed. 560, 11 Sup. Ct. Rep. 988.

[5] *King* v. *U. S.* 99 U. S. 229, 25 L. ed. 373.

[6] *Little Miami, etc. R. R. Co.* v. *U. S.* 108 U. S. 277, 280, 27 L. ed. 724, 725, 2 Sup. Ct. Rep. 627; *U. S.* v. *Little Miami, etc. R. R. Co.* 1 Fed. 700.

[7] *U. S.* v. *Tilden*, 10 Ben. 547, Fed. Cas. No. 16,521.

an action to recover the tax the controlling question is not what has been assessed but what is by law due." [8]

The result of a suit for the taxes of one year is not *res adjudicata* in suits for the taxes of subsequent years except in so far as the decision is binding as a precedent.[9]

The Revised Statutes provide that "Taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any Circuit or District Court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action." [10] No State statute can cut off or limit this remedy.[11]

All judgments recovered in such suits must be paid to the collector of the district.[12]

§ 85. **Suits to collect penalties.** The Revised Statutes concerning internal revenue provide that "It shall be the duty of the collectors, in their respective districts, subject to the provisions of this title, to prosecute for the recovery of any sums that may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any Circuit or District Court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction." [1] The penalty may also be levied with the tax by distress without suit.[2] Separate suits for the tax with interest, and for the penalty may be maintained concurrently; [3] but only one penalty, can be recovered for all failures to make a return prior to the commencement of the action.[4]

The United States are not subject to costs when the suit is brought on information received from a person other than a

[8] *U. S.* v. *Philadelphia & Reading R. R. Co.* 123 U. S. 113, 114, 38 L. ed. 138, 139, 8 Sup. Ct. Rep. 77, per Mr. Justice GRAY.

[9] *Lake Shore, etc. R. R. Co.* v. *People*, 46 Mich. 193, 9 N. W. 249.

[10] U. S. Rev. Stat. § 3213.

[11] *Dollar Savings Bank* v. *U. S.* 19 Wall. 227, 239, 22 L. ed. 80, 82.

[12] U. S. Rev. Stat. § 3216.

§ 85. [1] U. S. Rev. Stat. § 3213.

[2] U. S. Rev. Stat. § 3185; *supra*. § 69.

[3] *U. S.* v. *Dollar Savings Bank*, 15 Int. Rev. Rec. 193, Fed. Cas. No. 14,979.

[4] *U. S.* v. *Brooklyn, etc. Ry. Co.* 14 Fed. 284; *U. S.* v. *N. Y. Guarantee, etc. Co.* 8 Ben. 269, Fed. Cas. No. 15,872.

collector or deputy collector.[5] All judgments for penalties recovered by the United States must be paid to the collector in the same manner as internal taxes.[6]

§ 86. **Compromises.** The Revised Statutes provide that "The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise." [1]

An agreement to dismiss a case on the payment of costs and entry of a certificate of probable cause is in effect a compromise and should receive the consent of the three officers named in the statute,[2] but the unconditional dismissal of a suit under the directions of the Commissioner is not such a compromise.[3]

A compromise implies some mutuality of concession, and the power to compromise does not authorize a voluntary relinquishment of a tax lawfully assessed upon a solvent person.[4] The power, consequently, should not be exercised except when there is some doubt of the legality of the claim or of the ability to collect.[5]

The power to compromise a suit under this statute ceases upon the entry of judgment.[6]

[5] U. S. Rev. Stat. § 3214.

[6] U. S. Rev. Stat. § 3215.

§ 86. [1] U. S. Rev. Stat. § 3229. For an explanation of the relation of these three officers to compromise, see Opinion of Attorney General Ashton, 12 Op. Att. Gen. 472.

[2] Attorney General Evarts, 12 Op. Att. Gen. 536.

[3] Ibid. p. 552.

[4] Attorney General Devens, 16 Op. Att. Gen. 247.

[5] Attorney General Devens, 16 Op. Att. Gen. 247, 248.

[6] Attorney General Akerman, 13 Op. Att. Gen. 479.

CHAPTER VIII.

REMEDIES OF TAXPAYER.

§ 87. Enumeration of remedies of the taxpayer. The remedies of a taxpayer against an illegal income tax may be taken before or after the collection of the tax. The remedies before the assessment of the tax are a hearing before the collector or deputy collector as to the contents of the return;[1] on appeal to the collector from the deputy's decision;[2] and an appeal to the Commissioner of Internal Revenue from the decision of the collector.[3] These remedies have been previously discussed. If the internal revenue district in which the tax is assessed includes one of the territories or the District of Columbia, it is possible that the proceedings of some or all of these officers may be reviewed by the writ of certiorari, mandamus, or prohibition.[4] It is probable also that the proceedings of the Commissioner of Internal Revenue may be reviewed by one or more such writs.[5] He may perhaps also be personally liable in damages for an assessment upon income which is exempt from the tax.[6] The collection of the tax, if it or the warrant for its levy is void, may be resisted by force.[7] The remedies after the collection of the tax are appeals to the Commissioner of Internal Revenue,[8] suits against the United States[9] suits against the Collector of Internal Revenue,[10] and perhaps against the Commissioner of Internal Revenue.[11]

§ 88. Injunctions. When the income tax was first imposed during the civil war, a number of applications were made for injunctions against its assessment or collection. To prevent this practice, Congress inserted a section in the Act of March 2d, 1867,[1] which has been incorporated in the Revised

§ 87. [1] *Supra*, § 65.
[2] *Ibid.*
[3] *Ibid.*
[4] *Infra*, § 89.
[5] *Infra*, §§ 90–92.
[6] *Cutting* v. *Gilbert*, 5 Blatchf. 259, 2 Int. Rev. Rec. 94, Fed. Cas. No. 3,519; *infra*, § 79.
[7] *Infra*, § 94.
[8] *Infra*, § 95.
[9] *Infra*, § 101.
[10] *Infra*, § 97.
[11] *Infra*, § 93.

§ 88. [1] 14 Stat. at L. chap. 169, § 10, p. 475, U. S. Comp. Stat. 1901, p. 2088.

Statutes as follows: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." [2] Under this provision, it has been held that wherever a tax is imposed by a person in office having authority in the assessment of taxes for the United States, who acts under color of the statute, no injunction will be issued to restrain its collection, no matter how erroneous the assessment may be, and although the person against whom the assessment is made does not own the property taxed.[3] "It is sufficient that a statute has authorized the assessor to entertain the general subject of taxation; that it was in fact entertained, and a judgment, lawful or unlawful, was rendered concerning it." [4] It seems that the unconstitutionality of the statute imposing the tax will not authorize the issue of an injunction.[5] It has been held that a mandatory injunction requiring a collector of internal revenue to accept an export bond for spirits in a bonded warehouse and to allow their withdrawal for export without payment of taxes, is in effect a bill to restrain the collection of internal revenue taxes and cannot be granted.[6] "The inhibition of section 3224 applies to all assessments of taxes made under color of their offices by internal revenue officers." "The remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it. Such has been the current of decisions in the Circuit Courts of the United States, and we are satisfied it is a correct view of the law." [7] This prohibition is constitutional, since the remedy by injunction is not a remedy at common law, and

[2] U. S. Rev. Stat. § 3224, U. S. Comp. Stat. 1901, p. 2088.

[3] *Kensett* v. *Stivers*, 18 Blatchf. 397, 10 Fed. 517; *Pullan* v. *Kinsinger*, 2 Abb. U. S. 94, Fed. Cas. No. 11,463; *Howland* v. *Soule*, Deady, 413, Fed. Cas. No. 6,800; *Delaware R. Co.* v. *Prettyman*, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767; *Kissinger* v. *Bean*, 7 Biss. 60, Fed. Cas. No. 7,853; *Alkan* v. *Bean*, 23 Int. Rev. Rec. 351, Fed. Cas. No. 202; *United States* v. *Black*, 11 Blatchf. 538, Fed. Cas. No. 14,600. But see *Frayser* v. *Russell*, 3 Hughes, 227, Fed. Cas. No. 5,067. On general question of injunction to restrain collection of illegal tax, see note in 22 L.R.A. 699.

[4] EMMONS, J., in *Pullan* v. *Kinsinger*, 2 Abb. U. S. 94, 99, Fed. Cas. No. 11,463.

[5] *Robbins* v. *Freeland*, 14 Int. Rev. Rec. 28, Fed. Cas. No. 11,883; *Shelton* v. *Platt*, 139 U. S. 591, 598, 35 L. ed. 273, 277.

[6] *Miles* v. *Johnson*, 59 Fed. 38.

[7] Mr. Justice BLATCHFORD, in *Snyder* v. *Marks*, 109 U. S. 189, 193, 27 L. ed. 901, 903, 3 Sup. Ct. Rep. 159; citing *Howland* v. *Soule*, Deady, 413, Fed. Cas. No. 6,800; *Pullan* v.

therefore the statute does not deny the citizen a right to legal process.[8] "The system prescribed by the United States in regard to both customs duties and internal revenue taxes, of stringent measures, not judicial, to collect them, with appeals to specified tribunals, and suits to recover back moneys illegally exacted, was a system of corrective justice intended to be complete, and enacted under the right belonging to the Government to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues. In the exercise of that right, it declares, by section 3224, that its officers shall not be enjoined from collecting a tax claimed to have been unjustly assessed, when those officers in the course of general jurisdiction over the subject-matter in question, have made the assignment and claim that it is valid." [9] The prohibition was held to apply so as to forbid an injunction against assessments made and warrants for collection issued prior to the enactment of the original statute.[10] It has been suggested that an injunction might be granted to restrain an unlawful increase of an assessment when sufficient ground for equitable relief was shown.[11] An injunction by a state court against the assessment or collection of a Federal tax will be vacated after a removal of the case into a Federal court.[12] This statute does not apply so as to forbid an injunction by a Federal court against the collection or assessment of taxes by state or municipal authorities in a proper case for relief.[13] Judge HUGHES in the Circuit Court of the United States for the eastern district of Virginia granted an injunction against the as-

Kinsinger, 2 Abb. U. S. 94, Fed. Cas. No. 11,463; *Robbins* v. *Freeland*, 14 Int. Rev. Rec. 28, Fed. Cas. No. 11,-883; *Delaware R. R. Co.* v. *Prettyman*, 17 Id. 99, Fed. Cas. No. 3,767; *United States* v. *Black*, 11 Blatchf. 538, 543, Fed. Cas. No. 14,600; *Kissinger* v. *Bean*, 7 Biss. 60, Fed. Cas. No. 7,853; *United States* v. *Pacific Railroad*, 4 Dill. 66, 69, Fed. Cas. No. 15,983; *Alkan* v. *Bean*, 23 Int. Rev. Rec. 351, Fed. Cas. No. 202; *Kensett* v. *Stivers*, 18 Blatchf. 397, 10 Fed. 517.

[8] *Pullan* v. *Kinsinger*, 2 Abb. U. S. 94, Fed. Cas. No. 11,463.

[9] Mr. Justice BLATCHFORD, in *Snyder* v. *Marks*, 109 U. S. 189, 194, 27 L. ed. 901, 903, 3 Sup. Ct. Rep. 159.

[10] *Kensett* v. *Stivers*, 18 Blatchf. 397, 10 Fed. 517.

[11] *Magee* v. *Denton*, 5 Blatchf. 130, Fed. Cas. No. 8,943, A. D. 1863.

[12] *Kissinger* v. *Bean*, 7 Biss. 60, Fed. Cas. No. 7,853.

[13] *Re Tyler*, 149 U. S. 164, 37 L. ed. 689, 13 Sup. Ct. Rep. 785; *State Railroad Tax Cases*, 92 U. S. 575, 613, 23 L. ed. 669; *Schulenberg-Boeckeler Lumber Co.* v. *Town of Hayward*, 20 Fed. 422, 424. But see *Wells* v. *Central Vermont R. Co.* 14 Blatchf. 426, Fed. Cas. No. 17,390.

sessment of the tax against a citizen who had already paid all that was due. That judge said: "His threatened levy was for what was *not* a tax, and it was threatened to be made in a manner which set at nought the provisions of section 3371. It was a clear case for the exercise of the restraining power of the court; and was not a case falling within either the letter or spirit or intention of section 3224." [14]

The case which held that the Income Tax of 1894 was unconstitutional was brought by a stockholder to prevent his corporation from paying the tax. The government did not raise the objection of an adequate remedy at law and an injunction was consequently granted.[15] But where it appeared that the suit was collusive, the Supreme Court dismissed a similar bill; [16] and in a later case, where that did not appear but the district attorney took the objection, the injunction was denied in a District Court.[17]

§ 89. **Applications for the writs of mandamus, certiorari and prohibition against collectors and deputy collectors of internal revenue.** The District Courts of the United States have the power to grant writs of mandamus,[1] certiorari,[2] or prohibition,[3] except as incidental to another case pending before them, and in certain special cases enumerated in different statutes, none of which relate to the review of or interference with the assessment or collection of taxes. No State Court has the power to grant any of these writs against an officer of the

[14] *Frayser* v. *Russell*, 3 Hughes, 227, 330, Fed. Cas. No. 5,067.

[15] *Pollock* v. *Farmers' Loan & Trust Co.* 157 U. S. 429, 554 (Harlan and White, JJ. dissenting at p. 653), 39 L. ed. 759, 809, 844, 15 Sup. Ct. Rep. 673.

[16] *Corbus* v. *Alaska Treadwell Gold Min. Co.* 187 U. S. 455, 47 L. ed. 256, 23 Sup. Ct. Rep. 157.

[17] *Straus* v. *Abrast Realty Co.* (E. D. N. Y.) 200 Fed. 327. See Foster's Fed. Pr., Fifth ed., § 145.

§ 89. [1] *McIntire* v. *Wood*, 7 Cranch 504, 3 L. ed. 420; *M'Clung* v. *Silliman*, 6 Wheat. 598, 5 L. ed. 340; *Graham* v. *Norton*, 15 Wall. 427, 21 L. ed. 177; *Bath County* v. *Amy*, 13 Wall. 244, 20 L. ed. 539; *County of Greene* v. *Daniel*, 102 U. S. 187, 26 L. ed. 99; *Davenport* v. *County of Dodge*, 105 U. S. 237, 26 L. ed. 1018; *Louisiana* v. *Jumel*, 107 U. S. 711, 727, 27 L. ed. 448, 453, 2 Sup. Ct. Rep. 128. See Foster's Fed. Practice, 5th ed. § 457.

[2] U. S. R. S. § 716; *U. S.* v. *Young*, 94 U. S. 258, 260, 24 L. ed. 153; *Ex parte Van Orden*, 3 Blatchf. 166, Fed. Cas. No. 16,870; *In re Martin*, 5 Blatchf. 303, Fed. Cas. No. 9,151; *Fowler* v. *Lindsey*, 3 Dall. 411, 1 L. ed. 658. See Foster's Federal Practice, 5th ed. § 460.

[3] *Re Bininger*, 7 Blatchf. 159, Fed. Cas. No. 1,417; U. S. Rev. Stat. § 716, U. S. Comp. Stat. 1901, p. 580. See Foster's Federal Practice, 5th ed. § 456.

United States.[4] The Supreme Court of the District of Columbia has the power to issue these writs to officers of the United States in cases within its territorial jurisdiction.[5] It may be that the Supreme Courts of the Territories have the power to issue such writs to officers of the United States within their respective Territories.[6] The Supreme Court of the District of Columbia has no jurisdiction to grant such a writ to any officer of the United States beyond its territorial jurisdiction, which is limited to the District of Columbia. Consequently, no court can issue any of them to review the proceedings of a collector or deputy collector of internal revenue except a Territorial Court and the Supreme Court of the District of Columbia against officers residing within their respective territorial jurisdictions. Inasmuch as the proceedings of the collector and deputy collector in increasing returns can be reviewed upon appeal by the Commissioner of Internal Revenue, it is doubtful whether any court would interfere with their decisions. Consequently, the court in which the application for the review of proceedings to assess a tax or penalty is likely to be made is the Supreme Court of the District of Columbia, upon the application for one of those writs against the Commissioner of Internal Revenue.

§ 90. Mandamus against the Commissioner of Internal Revenue. The Supreme Court of the District of Columbia has the same jurisdiction in law and equity that was possessed by the preceding courts of the State of Maryland, in 1801, prior to the cession of the district to the United States, so far as not modified by statute.[1] "The Supreme Court of the District of Columbia has the power to issue the writ of mandamus, in cases in which the relator is by common law entitled to seek relief, to an officer of the United States or other person within its territorial jurisdiction.[2] The writ will not issue in a case where its effect would be to direct or control the head of an ex-

[4] *M'Clung* v. *Silliman*, 6 Wheat. 598, 5 L. ed. 340.

[5] *Infra*, §§ 73–76.

[6] *Clough* v. *Curtis*, 134 U. S. 361, 33 L. ed. 945, 10 Sup. Ct. Rep. 573. See Foster's Federal Practice, 5th ed. § 457.

§ 90. [1] Act of February 27, 1877, chap. 69, § 2118; 19 Stat. at L. 253; *Price* v. *State*, 8 Gill, 295, 310; *U. S.* v. *Schurz*, 102 U. S. 378, 393, 26 L. ed. 167, 170; Foster's Fed. Pr. 5th ed. § 68.

[2] 9 St. at L. 253; *United States* v. *Schurz*, 102 U. S. 378, 394, 26 L. ed. 167, 171; *Kendall* v. *U. S.* 12 Pet. 524, 9 L. ed. 1181; *Decatur* v. *Paulding*, 14 Pet. 497, 10 L. ed. 559; *Kendall* v. *Stokes*, 3 How. 87, 11 L. ed. 506; *Commissioners of Patents* v.

ecutive department in the exercise of judgment or discretion, even when in the exercise of his discretion the officer has been called upon to interpret a statute of doubtful meaning, and has made an erroneous interpretation of the same;[3] but when the officer refuses to act at all in a case where he is bound to act,[4] or when by special statute or otherwise a purely ministerial duty, which he is bound to perform without question, is imposed upon a public officer, even the head of an executive department, a mandamus may be issued to compel him to do such duty, if there is no other adequate remedy."[5] A peculiar rule, not usual in other jurisdictions, may be here observed: namely, that the court will not interfere to correct an erroneous interpretation, by the aid of the executive department, of a statute of doubtful meaning.[6] This limitation is not usual. Ordinarily, courts will grant a mandamus in case of such mistakes by executive officers upon the ground that they are bound to know the law, and that the courts will, consequently, interfere to compel them to observe it, even though they have acted in good faith.[7] Whether or not this doctrine would be extended to prevent the issue of the mandamus against the Commissioner

Whiteley, 4 Wall. 522, 18 L. ed. 335; *U. S. ex rel. Miller* v. *Black*, 128 U. S. 40, 50, 32 L. ed. 354, 358, 9 Sup. Ct. Rep. 12; *U. S. ex rel. Redfield* v. Windom, 137 U. S. 636, 34 L. ed. 811; *U. S. ex rel. Boynton* v. *Blaine*, 139 U. S. 306, 35 L. ed. 183, 11 Sup. Ct. Rep. 607; Foster's Fed. Pr. 5th ed. § 458.

[3] *U. S. ex rel. Dunlap* v. *Black*, 128 U. S. 40, 48, 32 L. ed. 354, 357, 9 Sup. Ct. Rep. 12; *Decatur* v. *Paulding*, 14 Pet. 497, 10 L. ed. 559; *U. S. ex rel. Redfield* v. *Windom*, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197.

[4] *U. S. ex rel. Dunlap* v. *Black*, 128 U. S. 40, 48, 32 L. ed. 354, 357, 9 Sup. Ct. Rep. 12; *Decatur* v. *Paulding*, 14 Pet. 497, 10 L. ed. 559; *U. S. ex rel. Redfield* v. *Windom*, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; *U. S. ex rel. Boynton* v. *Blaine*, 139 U. S. 306, 319, 35 L. ed. 183, 187, 11 Sup. Ct. Rep. 607; *U. S.* v. *Lamar*, 116 U. S. 423, 29 L. ed. 677, 6 Sup. Ct. Rep. 424.

[5] Foster's Fed. Pr. (2d ed.) § 458; citing *U. S. ex rel. Dunlap* v. *Black*, 128 U. S. 40, 48, 50, 32 L. ed. 354, 357, 358, 9 Sup. Ct. Rep. 12; *United States* v. *Schurz*, 102 U. S. 378, 394, 26 L. ed. 167, 171; *Butterworth* v. *Hoe*, 112 U. S. 50, 28 L. ed. 656, 5 Sup. Ct. Rep. 25; *Kendall* v. *U. S.* 12 Pet. 524, 9 L. ed. 1181; *U. S. ex rel. Redfield* v. *Windom*, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; *U. S. ex rel. Boynton* v. *Blaine*, 139 U. S. 306, 319, 35 L. ed. 183, 187, 11 Sup. Ct. Rep. 607.

[6] *U. S. ex rel. Dunlap* v. *Black*, 128 U. S. 40, 48, 32 L. ed. 354, 357, 9 Sup. Ct. Rep. 12; *Decatur* v. *Paulding*, 14 Pet. 497, 10 L. ed. 559; *U. S. ex rel. Redfield* v. *Windom*, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; Foster's Fed. Prac. (5th ed.) § 457.

[7] *State ex rel. Carpenter* v. *Hastings*, 10 Wis. 518; *State ex rel. Poe* v. *Raine*, 47 Ohio St. 447, 25 N. E. 54; *People ex rel. Otsego County Bank* v. *Board of Supervisors*, 51 N. Y. 401, 408.

of Internal Revenue to compel him to allow a deduction from the assessment of income exempt from the tax, or which the taxpayer is entitled to have deducted, is unsettled. It has been held by the courts of different States that where there is no statutory review of the correction of errors in the assessment of a tax, a mandamus will be granted for that purpose, provided that the evidence is undisputed, so that the duty of the assessor to allow the correction is clear.[8]

§ 91. Certiorari against Commissioner of Internal Revenue. "The writ of certiorari is a writ issued from a superior to an inferior court, ordering the latter to certify to the former certain proceedings before it.[1] At common law, the writ was issued for two purposes: as an appellate proceeding for the re-examination of some action of an inferior tribunal; and as an auxiliary process to enable the court to obtain further information in respect to some matter already before it for adjudication."[2] The Supreme Court of the District of Columbia has the power to grant a writ of certiorari in order to re-examine the decision of an inferior tribunal within that district and determine whether its proceedings have been irregular or without jurisdiction.[3] "A writ of certiorari, when its object is not to remove a case before trial, or to supply defects in a record, but to bring up, after judgment, the proceedings of an inferior court or tribunal whose procedure is not according to the course of the common law, is in the nature of a writ of error. Although the granting of the writ of certiorari rests in the discretion of the court, yet after the writ has been granted and the record certified in obedience to it, the questions arising upon that record must be determined according to fixed rules of law, and

[8] *People ex rel. Genesee County Bank* v. *Olmsted*, 45 Barb. 644, per DANIELS, J.; GORVER and MARTIN, JJ., concurring; *People ex rel. Lincoln* v. *Barton*, 44 Barb. 148, 29 How. Pr. 371; *People ex rel. Nostrand* v. *Wilson*, 7 N. Y. Supp. 727; *State ex rel. Poe* v. *Raine*, 47 Ohio St. 447, 25 N. E. 54; *State* v. *Covington*, 35 S. C. 245, 14 S. E. 499; *Smith* v. *King*, 14 Or. 10, 12 Pac. 8; Spelling on Extraordinary Relief, § 1534. See, however, as to the view that certiorari and not mandamus is the proper remedy to review the decision of the assessor or board of assessors, *People ex rel. Osborn* v. *Gilon*, 9 N. Y. Supp. 212; Spelling on Extraordinary Relief, § 1967.

§ 91. [1] Foster's Fed. Pr. 5th ed. § 460; *United States* v. *Young*, 94 U. S. 258, 259, 24 L. ed. 153. See *Harris* v. *Barber*, 129 U. S. 366 369 32 L. ed. 697, 699, 9 Sup. Ct. Rep. 314.

[2] Foster's Federal Practice, 5th ed. § 460; citing *United States* v. *Young*, 94 U. S. 258, 259, 24 L. ed. 153.

[3] *Harris* v. *Barber*, 129 U. S. 366, 32 L. ed. 697, 9 Sup. Ct. Rep. 314.

their determination is reviewable on error."[4] Of late years there has been a strong tendency on the part of the courts to extend this remedy in order to review proceedings of administrative officers which are of a quasi-judicial nature, when there is no other adequate remedy. The Supreme Court of the District of Columbia even after a sale for taxes may review by certiorari and quash the proceedings of the District Board of Equalization in assessing a tax upon exempt property.[5] The same court has issued the writ against the Treasurer of the United States and the commissioners of the district to set aside an invalid assessment of district taxes.[6] Where the district tax was assessed on different kinds of property as a unit and part of the property was not subject to taxation; the whole assessment was set aside when the court could not from the record separate the illegal tax on the exempt, from that on the taxable, property.[7] If these rulings are followed, there seems to be no reason in principle why the same relief should not be extended to review the proceedings of the Commissioner of Internal Revenue on the correction of the collector's list or the assessment of the income tax. That the act of assessment is judicial in its nature cannot well be questioned.[8] Where an assessor of taxes acts beyond his jurisdiction by assessing taxes upon persons or property who are exempt, it is a frequent practice for the courts to review his proceedings and quash the assessment by the writ of certiorari.[9] The rule is thus laid down by Mr. Spelling in his excellent book on Extraordinary Relief: "To authorize certiorari to review and quash the proceedings of tribunals charged with duties pertaining to taxation, there must be some irregularity fatally affecting their legality. It does not lie on account of mistake or

[4] Mr. Justice GRAY, in *Harris* v. *Barber* 129 U. S. 366, 369, 32 L. ed. 697, 699, 9 Sup. Ct. Rep. 314.

[5] *State* v. *City of Elizabeth*, 50 N. J. Law, 347, 13 Atl. 5; *Remey* v. *Assessors of Sunset*, 80 Iowa, 470, 45 N. W. 899; Spelling on Extraordinary Relief, § 1967.

[6] *Wood* v. *District of Columbia*, 6 Mackey 142: citing *Ewing* v. *St. Louis*, 5 Wall. 413, 18 L. ed. 657: *Gaither* v. *Watkins*, 66 Md. 577, 8 Atl. 464.

[7] *Delaware R. Co.* v. *Prettyman*, 17 Int. Rev. Rec. 99; Fed. Cas. No. 3,767; *Doll* v. *Evans*, 9 Phila. 364, Fed. Cas. No. 3,969.

[8] *Alexandria C. R. & S. B. Co.* v. *District of Columbia*, 5 Mackey, 376, 384: citing *Santa Clara Co.* v. *Southern Pac. R. R. Co.* 118 U. S. 394, 30 L. ed. 118, 6 Sup. Ct. Rep. 1133.

[9] *State ex rel. Benedictine Sisters* v. *City of Elizabeth*, 50 N. J. L. 347, 13 Atl. 5: *Remey* v. *Board of Equal-*

mere error of judgment. Nor can an error in the amount of an assessment or tax levied by the proper authority, when there is no error in the principle of apportionment, be corrected by certiorari, otherwise if the assessment be made on erroneous principles." [10]

A recent New York case holds that certiorari and not mandamus is the proper remedy to set aside an assessment against a person over whom the assessing body had no jurisdiction.[11] That was an application for a mandamus to compel the board of assessors to strike from the assessment list the name of the relator and substitute that of the real owner of the property affected. Mr. Justice LAWRENCE said, at special term: "Conceding all that the relator states in his moving papers to be established, this is not a proper case, in my opinion, for granting the mandamus which is asked for. The court will not by mandamus direct a quasi-judicial tribunal what to do. It can only set the board of assessors in motion where it has refused to act. (People v. Common Council, 78 N. Y. 37, and cases cited by RAPALLO, J.) Here the board of assessors has acted, and has rendered its judgment upon the question referred to in the relator's affidavits. If the decision of the board of assessors was wrong, mandamus is not the proper remedy for obtaining a review of its decision. Such a review may be obtained on the writ of certiorari." [12] The writ of certiorari has been granted, in Tennessee, to set aside a distress warrant illegally issued for the collection of taxes, and a penalty illegally imposed.[13] No attempt to obtain the writ against the Commissioner of Internal Revenue appears to have been made.

In a recent case, it was held by the Supreme Court of the United States that this writ would not issue to review the decision of the Postmaster-General forbidding the delivery of

ization of City of Burlington, 80 Iowa, 470, 45 N. W. 899; Spelling on Extraordinary Relief, § 1967.

[10] Spelling on Extraordinary Relief, § 1967, citing *Leroy* v. *Mayor*, 20 Johns. 430, 11 Am. Dec. 289; *Baldwin* v. *Calkins*, 10 Wend. 167; *Bouton* v. *Brooklyn*, 2 Wend. 395; *Gibbs* v. *Hampten*, 19 Pick. 298.

[11] *People ex rel. Osborn* v. *Gilon*, 9 N. Y. Supp. 212, 213. The General Term, speaking through Judge BRADY, affirmed the case upon this opinion. See, however, the cases cited in § 74, note 3, *supra*, which allowed the writ of mandamus in similar cases.

[12] *Ibid.*

[13] *Spears* v. *Loague*, 6 Coldw. 421.

mail to the relator.[14] There, however, the relator had a right to apply for an injunction "had there been an arbitrary exercise of statutory power or a ruling in excess of the jurisdiction conferred." [15] As has been already shown, no injunction will be issued against the collection of a tax imposed under the Internal Revenue Laws.[16] In the case just cited, the court said further: "Besides, if the common law writ, with all of its incidents, could be construed to apply to administrative and *quasi*-judicial rulings it could, with a greater show of authority, issue to remove a record before decision and so prevent a ruling in any case where it was claimed there was no jurisdiction to act. This would overturn the principle that, as long as the proceedings are *in fieri* the courts will not interfere with the hearing and disposition of matters before the Departments. Plested v. Abbey, 228 U. S. 42, 51, 57 L. ed. 724, 33 Sup. Ct. Rep. 503. To hold that the writ could issue either before or after an administrative ruling would make the dispatch of business in the Departments wait on the decisions of the courts and not only lead to consequences of the most manifest inconvenience, but would be an invasion of the Executive by the Judicial branch of the Government. The writ of certiorari is one of the extraordinary remedies and being such it is impossible to anticipate what exceptional facts may arise to call for its use, but the present case is not of that character, but rather an instance of an attempt to use the writ for the purpose of reviewing an administrative order. Public Clearing Houses v. Coyne, 194 U. S. 497, 48 L. ed. 1092, 24 Sup. Ct. Rep. 789. This cannot be done." [17]

§ 92. Writs of prohibition against Commissioner of Internal Revenue. The writ of prohibition is a writ issuing out of a court of superior jurisdiction, and directed to an inferior court for the purpose of preventing the inferior tribunal from usurping a jurisdiction to which it is not entitled.[1] In later times, the use of this writ has been extended so as to review the *quasi*-judicial proceedings of administrative officers and

[14] *Degge* v. *Hitchcock*, 229 U. S. 162, 57 L. ed. —, 33 Sup. Ct. Rep. 639.

[15] *Ibid.* 229 U. S. 162, 171, 57 L. ed. —, 33 Sup. Ct. Rep. 639.

[16] *Supra*, § 88.

[17] *Degge* v. *Hitchcock*, 229 U. S. 162, 172, 57 L. ed. —, 33 Sup. Ct. Rep. 639.

§ 92. [1] High on Extraordinary Remedies, § 762: Foster's Fed. Pr. 5th ed. § 456.

courts, such as railroad commissioners, county commissioners, and commissioners of roads, and to prevent them from exceeding their jurisdiction.[2] "Commissioners and other bodies are often vested with judicial powers in the performance of their duties, and carrying out the objects of their creation; and where such *quasi*-judicial bodies exceed their judicial powers, prohibition will lie against them." [3] It seems that the Supreme Court of the District of Columbia has the power to issue writs of prohibition directed to inferior courts within its territorial jurisdiction.[4] The writer has found no case in which the writ of prohibition has been granted by the Supreme Court of the district against an officer of the United States; but there seems to be no reason why that court should not follow the modern practice of state courts in that respect.

It has been held in California that the writ of prohibition will not issue against a tax collector who has received process for execution to restrain him from performing the duties of his office; [5] nor against a tax assessor to prevent his sale of property for a tax imposed upon other property not owned by the person against whom the tax was assessed,[6] upon the ground that the acts thus sought to be restrained were ministerial and not judicial. There would seem to be little doubt of the judicial nature of the assessment of the income tax by the Commissioner of Internal Revenue.[7]

It may be that the constitutionality of the act can be tested by an application for this writ against the Commissioner of Internal Revenue.

§ 93. Action against Commissioner of Internal Revenue. There is a distinction by Mr. Justice NELSON in a case under the former tax on bankers and brokers,[1] that the assessor is

[2] *Chandler* v. *Massachusetts R. R. Commr's*, 141 Mass. 208, 5 N. E. 509; *Connecticut River R. R. Co.* v. *Franklin County Commr's*, 127 Mass. 50; *State* v. *Commissioners*, 1 Mill, S. C. 55, 12 Am. Dec. 607.

[3] Spelling on Extraordinary Relief, § 1744.

[4] See the argument of Messrs. Jeff Chandler and Heppa Houston, in *Smith* v. *Whitney*, 116 U. S. 167, 173, 29 L. ed. 601, 602, 6 Sup. Ct. Rep. 570; *U. S.* v. *Schurz*, 102 U. S. 378, 26 L. ed. 167; *Price* v. *State*, 8 Gill, 295, 310; Act of February 27, 1877, chap. 69, section 2 (19 Stat. at L. 253).

[5] *Hobart* v. *Tillson*, 66 Cal. 210, 5 Pac. 83; *Le Conte* v. *Beverly*, 57 Cal. 267.

[6] *Farmers' Co-operative Union* v. *Thresher*, 62 Cal. 407.

[7] *Delaware R. Co.* v. *Prettyman*, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767; *Doll* v. *Evans*, 9 Phila. 364, Fed. Cas. No. 3,969.

§ 93. [1] Act of June 30, 1864, 13 Stat. at L. 223, chap. 173, as amend-

personally liable in case of an assessment in property exempt from the tax.[2] "I regard the liability of the assessor as settled, in a case of illegal assessment, by which I mean an assessment on property or business not liable to the tax. This is a naked trespass, where the property or business is disturbed by pretense of the authority. Even a court of special and limited jurisdiction is liable, in cases where its powers are carried beyond its jurisdiction." [3] Since then the office of assessor has been abolished and his duties transferred to the Commissioner of Internal Revenue.[4]

§ 94. **Resistance to levy.** Where the tax is void and not voidable and the distress warrant shows that upon its face, the taxpayer may resist the levy by force. The serious consequences, however, of resistance to a Federal officer, which may be criminal if the taxpayers view of the law is not sustained by the courts,[1] make it advisable to either allow the collector to collect the tax by distress, without resistance, and then to sue him for trespass or conversion, or to pay the tax under protest and then sue for its recovery.

§ 95. **Appeals to the commissioner for a return of taxes.** The Revised Statutes provide that:

"The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought

ed by Act of March 3, 1865, 13 Stat. at L. 469, chap. 78.

[2] *Cutting* v. *Gilbert*, 5 Blatchf. 259, 2 Int. Rev. Rec. 94, Fed. Cas. No. 3,519.

[3] *Cutting* v. *Gilbert*, 5 Blatchf. 259, 2 Int. Rev. Rec. 94, Fed. Cas. No. 3,519.

[4] U. S. Rev. Stat. § 3182, U. S. Comp. Stat. 1901, p. 2071; *supra*, § 66.

§ 94. [1] See U. S. Rev. Stat. § 5946.

against him by reason of anything done in the due performance of his official duty: *Provided,* That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is provided that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation." [1]

"No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of [*the*] Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited within the next section." [2]

"No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected, without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: *Provided,* That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section." [3]

§ 95. [1] U. S. Rev. Stat. § 3220.
[2] U. S. Rev. Stat. § 3226.
[3] U. S. Rev. Stat. § 3227.

"All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided,* That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date." [4]

Whether the appeal provided for in the foregoing sections is at the present time necessary under all circumstances may possibly be open to question. If the taxpayer has actually resisted the original assessment by proceedings before the commissioner, it might seem to be a useless proceeding to raise the same issues again before the same officer after payment, and there are judicial intimations to the same effect.[5] It is probably safer practice for the taxpayer, even though he has taken and opposed appeal before the Commissioner of Internal Revenue from the first assessment of the tax, to make a subsequent appeal for a remission of the same after its payment.[6] Where the first assessment has been set aside and a second assessment made, a new appeal should be taken to the commissioner if it is desired to contest the second assessment.[7] When suit is brought by the taxpayer against the collector or deputy collector for the recovery of the tax, the burden of proof is upon him to show that his appeal has been taken and decided, or else that decision was delayed more than six months from the date of the appeal.[8] The written appeal, or a certified copy thereof, must, therefore, be produced

[4] U. S. Rev. Stat. § 3228.

[5] Judge HUGHES in *U. S.* v. *Myers,* 3 Hughes, 239, 243, Fed. Cas. No. 15,846. See also *San Francisco Sav. Union* v. *Cary,* 17 Int. Rev. Rec. 109, Fed. Cas. No. 12,317, affirmed on another point in *Cary* v. *San Francisco Savings, etc. Society,* 22 Wall. 38, 22 L. ed. 779; but see further *Arnson* v. *Murphy,* 115 U. S. 579, 29 L. ed. 491, 6 Sup. Ct. Rep. 185.

[6] U. S. Rev. Stat. § 3226; *Arnson* v. *Murphy,* 115 U. S. 579, 585, 29 L. ed. 491, 493, 6 Sup. Ct. Rep. 185.

[7] *Cheatham* v. *U. S.* 92 U. S. 85, 23 L. ed. 561.

[8] U. S. Rev. Stat. § 3226; *Lauer* v. *U. S.* 5 Ct. Cl. 447; *Hubbard* v. *Kelley,* 8 W. Va. 46.

and put in evidence or its loss accounted for, since that is the best evidence of the appeal.[9] A letter of the commissioner is not sufficient evidence of the decision of the appeal; proof must be given by the production of the official records, or duly authenticated copies of the same.[10] A certificate endorsed on the appeal "examined and rejected," signed by some one unknown to the court, without evidence to show that the commissioner adopted it as his decision, is not competent proof of the decision.[11]

"An informal appeal to the commissioner, which is satisfactory to him and is accepted as such, is a sufficient presentation of a claim to lay the foundation of a more formal application to be made in conformity to the regulations, when required by the commissioner, as was done in the present case." [12] "At the time of the payment of this tax the claimant entered a protest against its legality. A protest has never been held by the Commissioner of Internal Revenue to be necessary as a condition precedent to the right of a claimant to appeal to him and to obtain a refund of taxes illegally assessed and collected. If this protest was in writing and was forwarded to the commissioner, he may have found from its language that it was made as, and was sufficient for a primary application or presentation of a claim for a refund." [13]

The appeal may be lodged with the appropriate collector. Such a practice is advantageous both to the taxpayer and the commissioner's office.[14] In the prosecution of his appeal the taxpayer is not to be prejudiced by mistakes or errors in the commissioner's office. They are not within his control.[15]

The action of the commissioner upon an application for the return of a tax is his own independent action, and is not controlled by the necessity of sending the papers to the Secretary

[9] *Hubbard* v. *Kelley*, 8 W. Va. 46.

[10] *Hubbard* v. *Kelley*, 8 W. Va. 46.

[11] *Lauer* v. *U. S.* 5 Ct. Cl. 447.

[12] *I. e.*, to permit of amendment and at the same time to save all rights as to statutory period (14 Op. Att. Gen. 615). RICHARDSON, C. J., *First Nat. Bank of Greencastle* v. *U. S.* 15 Ct. Cl. 225, 229.

[13] RICHARDSON, C. J., in *First Nat. Bank of Greencastle* v. *U. S.* 15 Ct. Cl. 225, at p. 229.

[14] *U. S.* v. *Savings Bank*, 104 U. S. 728, affirming s. c. 16 Ct. Cl. 335; *U. S.* v. *Harmon*, 147 U. S. 268, 37 L. ed. 164, 13 Sup. Ct. Rep. 327; but see *contra*, *Cotton Press Co.* v. *Collector*, 1 Woods, 296, Fed. Cas. No. 3,271.

[15] *Dunnegan* v. *U. S.* 17 Ct. Cl. 247, 259; *Woolner* v. *U. S.* 13 Ct. Cl. 365.

of the Treasury for his "consideration and advisement." [16] When, however, the commissioner had certified that a claim had been examined and allowed and thereupon transmitted it to the secretary for such consideration and advisement and the secretary had disapproved it, it was held that there had as yet been no such final allowance as would confer rights against the Government.[17]

The appeal under discussion is an appeal after payment of the tax, and would seem to be in the nature of a request for a repayment. The decision of the commissioner thereon determines the form of the taxpayer's subsequent proceedings. "Until an appeal is taken to the commissioner no suit whatever can be maintained to recover back taxes illegally assessed or erroneously paid. If on the appeal the claim is rejected, an action lies against the collector (Rev. Stat. sec. 3226 [U. S. Comp. Stat. 1901, p. 2088]), and through him, on establishing the error or illegality, a recovery can be had. If the claim is allowed, and payment for any cause refused, suit may be brought directly against the Government in the Court of Claims. * * * A rejected claim may be prosecuted against the collector, and an allowed claim, not paid, may be sued for in the Court of Claims. To say the least the decision of the commissioner on the appeal is sufficient to determine whether one form of remedy shall be resorted to by the claimant, or the other." [18]

If the commissioner decides the appeal in favor of the taxpayer, he certifies the result to the taxpayer in a form of which the following is an illustration: [19]

"[Form No. 680.]

"Schedule of claims for the refunding of taxes erroneously assessed and paid, which have been examined and allowed.

District.	Claimants.	Amount.
1st La.	J. O. Nixon,	$1,092 55
	Total,	$1,092 55

[16] *Sybrandt* v. *U. S.* 19 Ct. Cl. 1.

[17] *Dupasseur* v. *U. S.* 19 Ct. Cl. 1; *Stotesbury* v. *U. S.* 146 U. S. 196, 36 L. ed. 940, 13 Sup. Ct. Rep. 1.

[18] WAITE, C. J., in *United States* v. *Savings Bank*, 104 U. S. 728, at p. 734, 26 L. ed. 908, 909.

[19] Taken from *Nixon* v. *United States*, 18 Ct. Cl. 448, at p. 451.

"I hereby certify that the foregoing claims for the refunding of taxes erroneously assessed and paid have been examined and allowed.

"H. C. ROGERS,
"*Acting Commissioner.*

"OFFICE INTERNAL REVENUE, *Aug.* 28th. 1879.

"*Commis. of Int. Rev. in account with United States, Cr.*
"By this amount for the refunding of taxes erroneously assessed and collected as per schedule No. 680.

One claim, January, '76		$1,092.55
Judgment, etc.	$880.00	
Interest	189.20	
		1,069.20
Costs		23.35
Total		$1,092.55"

This certificate is to be presented through the accounting officers to the Treasury Department, because the commissioner is not a disbursing officer, and the Treasury Department may then pay the claim. The Department, however, may refuse to pay, and the taxpayer must take steps to compel payment.

It is now settled that the Court of Claims has jurisdiction to entertain a suit on an allowance like the foregoing.[20] The allowance is in the nature of an account stated, and conclusive in his favor against the Government.[21] Whether the allowance can be impeached is a question that seems not decided;[22] but there is a *dictum* that it may, on the equitable grounds of fraud and mistake and that the burden of proof would in such case rest upon the Government.[23] If made without jurisdiction it is void.[24] When the amount of the claim does not exceed ten

[20] *United States* v. *Savings Bank*, 104 U. S. 728, 26 L. ed. 908.

[21] *United States* v. *Kaufman*, 96 U. S. 567, 24 L. ed. 792; *United States* v. *Barnett*, 154 U. S. 676, 26 L. ed. 909, and 14 Sup. Ct. Rep. 1211; *Nixon* v. *United States*, 18 Ct. Cl. 448.

[22] *United States* v. *Kaufman*, 96 U. S. 567, 24 L. ed. 792.

[23] *First National Bank of Greencastle* v. *United States*, 15 Ct. Cl. 225, 231.

[24] *Seat. Admr.* v. *United States*, 18 Ct. Cl. 458.

thousand dollars, the District Courts of the United States have jurisdiction to entertain suit.[25] Such suits in the District Courts must be brought in the district of the plaintiff's residence.[26]

It was held in one case that the commissioner might revoke his allowance at any time before payments,[27] but it is difficult to reconcile that decision with the cases holding that the allowance gives an immediate right of action against the Government.[28]

If, however, the commissioner decides the appeal against the taxpayer, the situation is quite different from that heretofore considered. A refusal to allow the claim is not subject to review in the Court of Claims,[29] but the taxpayer must establish his claim by suit. Section 3226 of the Revised Statutes authorizes (by implication) a suit against the collector, the conditions and incidents of which are fully considered elsewhere.[30] If suit is brought it is unquestionably the better practice to notify the Treasury officials, although it has been held unnecessary so to do.[31]

After a final judgment in favor of the taxpayer, when a writ of error has been taken he should again present his claim so established to the commissioner. Even then, it is said in one case, that the judgment is not conclusive against the Government, because by virtue of the provisions of § 3220 of the Revised Statutes the commissioner may review any judgment against a collector.[32] The first decision of the commissioner disallowing the claim does not prevent him from subsequently allowing a payment on a judgment against the collector.[33]

§ 96. Jurisdiction of suits by taxpayers after payment or collection. A suit against a collector or deputy collector to collect a tax paid under protest, or for trespass on account of the

[25] Ind. Code § 24; 36 Stat. at L. 1087, chap. 231, U. S. Comp. Stat. Supp. 1911, p. 128; Foster's Fed. Pr. 5th ed. 596.

[26] *Ibid.*

[27] *Ridgway* v. *United States*, 18 Ct. Cl. 707.

[28] *United States* v. *Kaufman*, 96 U. S. 567, 24 L. ed. 792; *United States* v. *Barnett*, 154 U. S. 676, 24 L. ed. 909, and 14 Sup. Ct. Rep. 1211; *Nixon* v. *United States*, 18 Ct. Cl. 448.

[29] *Boehm* v. *United States*, 21 Ct. Cl. 290.

[30] *Infra*, § 79.

[31] *Nixon* v. *United States*, 18 Ct. Cl. 448; *Dunnegan* v. *United States*, 17 Ct. Cl. 247.

[32] *Dunnegan* v. *United States*, 17 Ct. Cl. 247.

[33] *Nixon* v. *U. S.* 18 Ct. Cl. 448.

illegal collection of the tax, arises under the Constitution and laws of the United States.[1] It may be maintained in a District Court of the United States no matter how small is the amount involved.[2] Unless a constitutional question is raised, it may be reviewed on writ of error by the Circuit Court of Appeals.[3] If a constitutional question is raised, the whole case may be reviewed by the Supreme Court of the United States.[4] Such suits may also be brought in the State Courts.[5] The judgment of the State Court in such a case may be reviewed by the Supreme Court of the United States on writ of error by the defendant.[6] Such an action, when brought in a State Court, may also be removed into the District Court of the United States by the defendant under the Judicial Code, which provides:

"When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time be-

§ 96. [1] *Ames* v. *Hager*, 1 L.R.A. 377, 13 Sawy. 473, 36 Fed. 129. See also *U. S.* v. *Mooney*, 116 U. S. 104, 107, 29 L. ed. 550, 551, 6 Sup. Ct. Rep. 304. See Foster's Federal Practice, 5th ed. §§ 24, 34.

[2] *Ames* v. *Hager*, 1 L.R.A. 377, 36 Fed. 129. See also *U. S.* v. *Mooney*, 116 U. S. 104, 107, 29 L. ed. 550, 551, 6 Sup. Ct. Rep. 304. See Foster's Federal Practice, 5th ed. §§ 5, 34.

[3] *Hubbard* v. *Soby*, 146 U. S. 56, 36 L. ed. 886, 13 Sup. Ct. Rep. 13; *U. S.* v. *Hopewell*, 2 C. C. A. 510, 5 U. S. App. 137, 51 Fed. 798, 799; *Passavant* v. *United States*, 148 U. S. 214, 37 L. ed. 427, 13 Sup. Ct. Rep. 572; *Louisville Public Warehouse Co.* v. *Collector*, 1 C. C. A. 371, 6 U. S. App. 53, 49 Fed. 561. See Foster's Federal Practice, 5th ed. § 691.

[4] Ind. Code § 238; 36 Stat. at L. 1087, chap. 231, U. S. Comp. Stat. Supp. 1911, p. 128, Foster's Fed. Pr. 5th ed. § 688.

[5] *Collector* v. *Hubbard*, 12 Wall. 1, 20 L. ed. 272; *Hubbard* v. *Kelley*, 8 W. Va. 46; *Assessor* v. *Osborn*, 5 Wall. 567, 572, 19 L. ed. 748, 750.

[6] *Collector* v. *Hubbard*, 12 Wall. 1, 20 L. ed. 272. See, for the practice on such a writ of error, Foster's Federal Practice (5th ed.), chapter XXXVI.

fore the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor-at-law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State Court. When the suit is commenced in the State Court by summons, subpœna, petition, or any process except *capias*, the clerk of the district court shall issue a writ of certiorari to the State Court, requiring it to send to the District Court the record and proceeding in the cause. When it is commenced by *capias*, or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State Court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State Court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State Court shall be void. And if the defendant in the suit or prosecution be in actual custody or mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to the law and the order of the district court, or, in vacation, of any judge thereof; and

if, upon the removal of such suit or prosecution it is made to appear to the District Court that no copy of the record and proceedings therein in the State Court can be obtained, the district court may allow and require the plaintiff to proceed *de novo,* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of *non prosequitur* may be rendered against him, with costs for the defendant." [7]

The statute of which this is a substantial re-enactment was held to be constitutional; [8] even when under it an indictment of a deputy collector of internal revenue for murder under color of his office was thus removed from a State Court to a Federal Court, a reason for sustaining the act was thus stated by Mr. Justice STRONG:

"We come then to the inquiry, most discussed during the argument, whether section 643 is a constitutional exercise of the power vested in Congress. Has the Constitution conferred upon Congress the power to authorize the removal, from a State Court to a Federal Court, of an indictment against a revenue officer for an alleged crime against the state, and to order its removal before trial, when it appears that a Federal question or a claim to a Federal right is raised in the case, and must be decided therein? A more important question can hardly be imagined. Upon its answer may depend the possibility of the General Government's preserving its own existence. As was said in Martin v. Hunter, 1 Wheat. 363, 4 L. ed. 111, 'The General Government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers.' It can act only through its officers and agents, and they must act within the states. If, when thus acting, and within the scope of their authority, those officers can be arrested, and brought to trial in a State Court, for an alleged offense against the law of the state, yet warranted by the Federal authority they possess, and if the General Government

[7] 36 Stat. at L. 1087, chap. 231, U. S. Comp. Stat. Supp. 1911. p. 128. Foster's Fed. Pr. 5th ed. § 551.

[8] *Tennessee* v. *Davis,* 100 U. S. 257, 25 L. ed. 648.

is powerless to interfere at once for their protection; if their protection must be left to the action of the State Court; the operations of the General Government may at any time be arrested at the will of one of its members. The legislation of a state may be unfriendly. It may affix penalties to acts done under the immediate direction of the National Government, and in obedience to its laws. It may deny the authority conferred by those laws. The State Court may administer not only the laws of the state, but equally Federal law, in such a manner as to paralyze the operations of the Government. And even if, after trial and final judgment in the State Court, the case can be brought into the United States Court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested.

"We do not think such an element of weakness is to be found in the Constitution. The United States is a Government with authority extending over the whole territory of the Union, acting upon the states and upon the people of the states. While it is limited in the number of its powers, so far as its sovereignty extends, it is supreme. No State Government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.

"By the last clause of the 8th section of the 1st article of the Constitution, Congress is invested with power to make all laws necessary and proper for carrying into execution, not only all the powers previously specified, but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. Among these is the judicial power of the Government. That is declared by the 2d section of the 3d article to 'Extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority, etc.' This provision embraces alike civil and criminal cases arising under the Constitution and laws. Cohen v. Virginia, 6 Wheat. 399, 5 L. ed. 290. Both are equally within the domain of the judicial powers of the United States, and there is nothing in the grant to justify an assertion

that whatever power may be exerted over a civil case may not be exerted as fully over a criminal one. And a case arising under the Constitution and laws of the United States may as well arise in a criminal prosecution as in a civil suit. What constitutes a case thus arising was early defined in the case cited from 6 Wheaton. It is not merely one where a party comes into court to demand something conferred upon him by the Constitution or by a law or treaty. A case consists of the right of one party as well as the other, and may truly be said to arise under the Constitution or a law or a treaty of the United States whenever its correct decision depends upon the construction of either. Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted. Story, Const. sec. 1647; Cohen v. Virginia, 6 Wheat. 379, 5 L. ed. 285. It was said in Osborn v. Bk. 9 Wheat. 823, 6 L. ed. 224: 'When a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it.' And a case arises under the laws of the United States, when it arises out of the implication of the law. Chief Justice MARSHALL said, in the case last cited: 'It is not unusual for a legislative act to involve consequences which are not expressed. An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of Congress to imply, without expressing, this very exemption from state control.' * * * 'The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while in the line of their duty; and yet this protection is not expressed in any act of Congress. It is incidental to and is implied in the several acts by which those institutions are created; and is secured to the individuals employed in them by the judicial power alone; that is, the judicial power is the

instrument employed by the Government in administering this security.'

"The constitutional right of Congress to authorize the removal before trial of civil cases arising under the laws of the United States has long since passed beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution, and the power has been in constant use ever since. The Judiciary Act of September 24, 1789, was passed by the first Congress, many members of which had assisted in framing the Constitution; and though some doubts were soon after suggested whether cases could be removed from State Courts before trial, those doubts soon disappeared. Whether removal from a State to a Federal Court is an exercise of appellate jurisdiction, as laid down in Story's Commentaries on the Constitution, section 1745, or an indirect mode of exercising original jurisdiction, as intimated in R. Co. v. Whiton, 13 Wall. 270, 20 L. ed. 571, we need not now inquire. Be it one or the other, it was ruled in the case last cited to be constitutional. But if there is power in Congress to direct a removal before trial of a civil case arising under the Constitution or laws of the United States, and direct its removal because such a case has arisen, it is impossible to see why the same power may not order the removal of a criminal prosecution, when a similar case has arisen in it. The judicial power is declared to extend to all cases of the character described, making no distinction between civil and criminal, and the reasons for conferring upon the courts of the National Government superior jurisdiction over cases involving authority and rights under the laws of the United States, are equally applicable to both. As we have already said, such a jurisdiction is necessary for the preservation of the acknowledged powers of the Government. It is essential, also, to an uniform and consistent administration of national laws. It is required for the preservation of that supremacy which the Constitution gives to the General Government by declaring that the Constitution and laws of the United States made in pursuance thereof, and the treaties made or which shall be made under the authority of the United States, shall be the supreme laws of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

The founders of the Constitution could never have intended to leave to the possibly varying decisions of the State Courts what the laws of the Government it established are, what rights they confer, and what protection shall be extended to those who execute them. If they did, where is the supremacy over those questions vested in the Government by the Constitution? If, whenever and wherever a case arises under the Constitution and laws or treaties of the United States, the National Government cannot take control of it, whether it be civil or criminal, in any stage of its progress, its judicial power is, at least, temporarily silenced, instead of being at all times supreme. In criminal as well as in civil proceedings in State Courts, cases under the Constitution and laws of the United States might have been expected to arise, as, in fact, they do. Indeed, the powers of the General Government and the lawfulness of authority exercised or claimed under it, are quite as frequently in question in criminal cases in State Courts as they are in civil cases, in proportion to their number. The argument so much pressed upon us, that it is an invasion of the sovereignty of a state to withdraw from its courts into the courts of the General Government the trial of prosecutions for alleged offenses against the criminal laws of a state, even though the defense presents a case arising out of an act of Congress, ignores entirely the dual character of our Government. It assumes that the states are completely and in all respects sovereign. But when the National Government was formed, some of the attributes of state sovereignty were partially, and others wholly, surrendered and vested in the United States. Over the subjects thus surrendered, the sovereignty of the States ceased to extend. Before the adoption of the Constitution, each state had complete and exclusive authority to administer by its courts all the law, civil and criminal, which existed within its borders. Its judicial power extended over every legal question that could arise. But when the Constitution was adopted, a portion of that judicial power became vested in the new Government created, and so far as thus vested it was withdrawn from the sovereignty of the state. Now the execution and enforcement of the laws of the United States, and the judicial determination of questions arising under them, are confided to another sovereign, and to that extent the sovereignty of the state

is restricted. The removal of cases arising under those laws, from State into Federal Courts, is, therefore, no invasion of State domain. On the contrary, a denial of the right of the General Government to remove them, to take charge of and try any case arising under the Constitution or laws of the United States, is a denial of the conceded sovereignty of that Government over a subject expressly committed to it. The second question is: 'Whether, if the case be removable from the State Court, there is any mode and manner of procedure in the trial prescribed by the act of Congress.'

"Whether there is or not, is totally immaterial to the inquiry whether the case is removable; and this question can hardly have arisen on the motion to remand the case. The imaginary difficulties and incongruities supposed to be in the way of trying in the Circuit Court an indictment for an alleged offense against the peace and dignity of a state, if they were real, would be for the consideration of Congress. But they are unreal. While it is true there is neither is section 643 nor in the act of which it is a re-enactment, any mode of procedure in the trial of a removed case prescribed, except that it is ordered, the cause when removed shall proceed as a cause originally commenced in that court, yet the mode of trial is sufficiently obvious. The Circuit Courts of the United States have all the appliances which are needed for the trial of any criminal case. They adopt and apply the laws of the states in civil cases, and there is no more difficulty in administering the state's criminal law. They are not foreign courts. The Constitution has made them courts within the states to administer the laws of the states in certain cases: and so long as they keep within the jurisdiction assigned to them, their general powers are adequate to the trial of any case. The supposed anomaly of prosecuting offenders against the peace and dignity of a state, in tribunals of the General Government, grows entirely out of the division of powers between that Government and the Government of a state; that is, a division of sovereignty over certain matters. When this is understood, and it is time it should be, it will not appear strange that, even in cases of criminal prosecutions for alleged offenses against a state, in which arises a defense under United States law, the General

Government should take cognizance of the case and try it in its own courts, according to its own forms of proceeding." [9]

§ 97. Actions for trespass or conversion against the collector or deputy collector. When the tax has been collected by distraint no action will lie against the collector or deputy collector in trespass *vi et armis;* [1] or on the case,[2] or for conversion; provided that in the case of the deputy the warrant was valid on its face,[3] and in the case of the collector when the assessment was certified to him by the Commissioner of Internal Revenue and he had no discretion to revise or alter it,[4] unless perhaps when the officer knew *aliunde* facts which made the proceedings void.[5] "It has been ruled that where an officer knows of facts *aliunde* his process, which render his proceedings void, he is not protected." [6] An action of trespass may be brought against the collector or deputy collector without any appeal to the commissioner.[7] And such suits are barred by the time prescribed by the statute of limitations of the state where they are brought.[8]

§ 98. Suits to recover money paid under protest. The usual method of contesting the validity of an income tax is to pay the money under protest and then to sue the collector for its recovery as money had and received to the plaintiff's use. This remedy, at least after the collector has paid the money into the Treasury, is one which Congress has the power to regulate within its discretion,[1] or even to take away altogether.[2]

[9] *Tennessee* v. *Davis,* 100 U. S. 257, 262–267, 271, 25 L. ed. 648, 650–653. See, however, the strong dissenting opinion of Mr. Justice CLIFFORD, with whom Mr. Justice FIELD concurred.

§ 97. [1] *Haffin* v. *Mason,* 15 Wall. 671, 21 L. ed. 196; *Erskine* v. *Hohnbach,* 14 Wall. 613, 616, 20 L. ed. 745, 747.

[2] *Harding* v. *Woodcock,* 127 U. S. 43, 34 L. ed. 580, 11 Sup. Ct. Rep. 6.

[3] *Stutsman Co.* v. *Wallace,* 142 U. S. 293, 35 L. ed. 1018, 12 Sup. Ct. Rep. 227; *Haffin* v. *Mason,* 15 Wall. 671, 21 L. ed. 196; *Erskine* v. *Hohnbach,* 14 Wall. 613, 20 L. ed. 745.

[4] *Harding* v. *Woodcock,* 127 U. S. 43, 46, 34 L. ed. 580, 581, 11 Sup. Ct. Rep. 6.

[5] *Stutsman Co.* v. *Wallace,* 142 U. S. 293, 310, 35 L. ed. 1018, 1024, 12 Sup. Ct. Rep. 227.

[6] Chief Justice FULLER, in *Stutsman County* v. *Wallace,* 142 U. S. 293, 310, 35 L. ed. 1018, 1024, 12 Sup. Ct. Rep. 227.

[7] *Erskine* v. *Hohnbach,* 14 Wall. 613, 20 L. ed. 745. *Contra, Coblens* v. *Abel,* Woolworth, 293, 297.

[8] *Ibid.; M'Cluny* v. *Silliman,* 3 Pet. 270, 277, 7 L. ed. 676; *Andreae* v. *Redfield,* 98 U. S. 225, 25 L. ed. 158; *Barney* v. *Oelrichs,* 138 U. S. 529, 34 L. ed. 1037, 11 Sup. Ct. Rep. 414.

§ 98. [1] *Snyder* v. *Marks,* 109 U. S. 189, 194, 27 L. ed. 901, 903, 3 Sup. Ct. Rep. 157. As to right generally to recover money paid for illegal taxes after it has been distributed, paid over, or distributed, see note in 11 L.R.A.(N.S.) 1104.

[2] *Cary* v. *Curtis,* 3 How. 236, 11 L. ed. 576. See also *Hilton* v. *Merritt,*

This rule was explained in an early case against a collector of customs.[3]

"It is contended, however, that the language and the purposes of Congress, if really what we hold them to be declared in the statute of 1839, cannot be sustained, because they would be repugnant to the Constitution, inasmuch as they would debar the citizens of his right to resort to the courts of justice. The supremacy of the Constitution over all officers and authorities, both of the Federal and State Governments, and the sanctity of the rights guaranteed by it, none will question. These are *concessa* on all sides. The objection above referred to admits of the most satisfactory refutation. This may be found in the following positions, familiar in this and in most other governments, viz.: that the Government, as a general rule, claims an exemption from being sued in its own courts. That although, as being charged with the administration of the laws, it will resort to those courts, as means of securing this great end, it will not permit itself to be impleaded therein, save in instances forming conceded and express exceptions. Second, in the doctrine so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the Government, and to give to the former powers limited by its own discretion merely. It follows, then, that the courts created by statute must look to the statute as the warrant for their authority; certainly they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which

110 U. S. 97, 28 L. ed. 83, 3 Sup. Ct. Rep. 548; *Earnshaw* v. *U. S.* 146 U. S. 60, 36 L. ed. 887, 13 Sup. Ct. Rep. 214; *Passavant* v *U. S.* 148 U. S. 214.

219, 37 L. ed. 426, 428, 13 Sup. Ct. Rep. 572.

[3] *Cary* v. *Curtis*, 3 How. 236, 245, 246. 11 L. ed. 576, 581, 582.

may be clearly denied to them. This argument is in nowise impaired by admitting that the judicial power shall extend to all cases arising under the Constitution and laws of the United States. Perfectly consistent with such an admission is the truth, that the organization of the judicial power, the definition and distribution of the subjects of jurisdiction in the Federal tribunals, and the modes of their action and authority, have been, and of right must be, the work of the legislature. The existence of the judicial act itself, with its several supplements, furnishes proof unanswerable on this point. The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law.

"In devising a system for imposing and collecting the public revenue, it was competent for Congress to designate the officer of the Government in whom the rights of that Government should be represented, in any conflict which might arise, and to prescribe the manner of trial. It is not imagined that by so doing Congress is justly chargeable with usurpation or that the citizen is thereby deprived of his rights. There is nothing arbitrary in such arrangements; they are general in their character; are the result of principles inherent in the Government; are defined and promulgated as the public law." [4]

The Revised Statutes provide:

"No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made, to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the commissioner has been had therein: *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought without first having a decision of the commissioner at any time within the period limited in the next section." [5]

[4] *Cary* v. *Curtis*, 3 How. 236, 245, 246, 11 L. ed. 576, 581, 582.

[5] U. S. Rev. Stat. § 3226, U. S. Comp. Stat. 1901, p. 2088.

An appeal to the Commissioner of Internal Revenue for the return of the tax is, consequently, a condition precedent to such a suit.[6] The procedure upon such an appeal has been already considered. Upon the decision of the commissioner or at the expiration of six months from the date of the appeal, whether the commissioner has decided it or not,[7] the suit may be brought. The burden of proof to show that the appeal was taken and the decision made, or the six months lapsed, has been held to rest upon the plaintiff; [8] another case holds that a failure to bring an appeal before suit is a matter in abatement which, is not pleaded by the defendant, is waived.[8a]

No suit can be maintained unless the taxes were paid under duress and under protest.[9] The protest under the internal revenue laws need not, however, be in writing, and an oral protest is sufficient.[10] Such protest must, however, be brought clearly to the attention of the collector.[11] Where the payment was made by a check which bore upon its face the words "paid under protest to prevent distraint and penalty," and there was no evidence that this was brought to the attention of the commissioner, it was held to be insufficient.[12]

There is a dictum of a State Court to the effect, that an action may lie to recover such a tax paid without protest, if an appeal to the commissioner has been duly taken after its payment.[13] Where " the taxes were demanded by an officer having authority to collect them by distraint, without action, that is sufficient duress of the plaintiff's property, to make the payment involuntary." [14] In order to recover duties on imports

[6] U. S. Rev. Stat. § 3226; *Cheatham* v. *United States*, 92 U. S. 85, 23 L. ed. 561.

[7] U. S. Rev. Stat. § 3226; *Cheatham* v. *United States*, 92 U. S. 85, 23 L. ed. 561.

[8] *Hubbard* v. *Kelley*, 8 W. Va. 46.

[8a] *Hendy* v. *Soule*, Deady, 400, Fed. Cas. No. 6,359.

[9] *Arnson* v. *Murphy*, 115 U. S. 579, 29 L. ed. 491, 6 Sup. Ct. Rep. 185; *Hendy* v. *Soule*, Deady, 400, Fed. Cas. No. 6,359; *Wright* v. *Blakeslee*, 101 U. S. 174, 25 L. ed. 1048; *Stewart* v. *Barnes*, 153 U. S. 456, 38 L. ed. 781, 14 Sup. Ct. Rep. 849; *Philadelphia* v. *Collector*, 5 Wall. 720, 18 L. ed. 614; *Collector* v. *Hubbard*, 12 Wall. 1, 20 L. ed. 272.

[10] *Wright* v. *Blakeslee*, 101 U. S. 174, 179, 25 L. ed. 1048, 1049.

[11] *Kings Co. Institution* v. *Blair*, 116 U. S. 200, 205, 29 L. ed. 637, 659, 6 Sup. Ct. Rep. 353.

[12] *Kings Co. Sav. Institution* v. *Blair*, 116 U. S. 200, 203, 205, 29 L. ed. 657, 658, 6 Sup. Ct. Rep. 353.

[13] *Hubbard* v. *Kelley*, 8 W. Va. 46.

[14] *Hendy* v. *Soule*, Deady, 400, 401, Fed. Cas. No. 6,359, per DEADY, J.

illegally exacted, the protest must be in writing, setting forth distinctly and specifically the grounds of the objections.[15]

A finding of the court that the payment of the tax and penalty was made under protest is sufficient to show that the payment was not voluntary.[16] Where a person from whom an internal revenue tax has been illegally exacted accepts from an officer of the United States without objection payment of the sum thus illegally exacted, he thereby gives up his right to sue for interest and incidental damages.[17]

Where the sum for which the suit was brought consists of the amount of a second assessment of a tax after the first, the taxpayer "makes out his *prima facie* case by showing that he paid the original assessment for the same months for which he was assessed and by showing his payment of the re-assessment under compulsion, his appeal, and the fact that he brought his suit within the proper time after the appeal was taken. The Government, to establish a defense, cannot rely solely upon the record of a re-assessment, but should prove the jurisdictional fact necessary to exist in order to enable the assessor to make a re-assessment. That jurisdictional fact is, in my opinion, the determination or the decision of the assessor that an error has been committed." [18]

§ 99. Statute of limitations to suits against collectors. The Revised Statutes contain a statute of limitations to suits against collectors as follows:

"No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: *Provided,* That actions for such claims which accrued prior to June six, eighteen hundred and

[15] U. S. Rev. Stat. § 2931; *Westray* v. *United States,* 18 Wall. 322, 21 L. ed. 763; *Barney* v. *Watson,* 92 U. S. 449, 23 L. ed. 730; *Davies* v. *Arthur,* 96 U. S. 148, 24 L. ed. 758.

[16] *Wright* v. *Blakeslee,* 101 U. S. 174, 25 L. ed. 1048.

[17] *Stewart* v. *Barnes,* 153 U. S. 456, 38 L. ed. 781, 14 Sup. Ct. Rep. 849.

[18] Shipman, J., in *Barker* v. *White,* 11 Blatchf. 445, 19 Int. Rev. Rec. 117, Fed. Cas. No. 996.

seventy-two, may be brought within one year from said date, and that where any such claim was pending before the commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section." [1]

It seems that notice to the applicant of the decision of the commissioner upon the appeal is not necessary to make the decision operative and set the statute of limitations running.[2] The taxpayer, "knowing when his appeal was taken, can always protect himself by bringing his suit after the expiration of the time named after the appeal, although he has not heard of a decision, being thus certain that he will have brought it within the time prescribed after a possible decision." [3]

When the first appeal was rejected for informality, and the second rejected on the merits, it was held that the time to sue ran from the decision on the second appeal.[4] It has been held that section 3226 is something more than a statute of limitations and is a condition precedent to the right of action.[5] Consequently, where the tax was paid under protest in installments without any appeal to the commissioner, that the six months was not thereby extended.[6] This statute of limitations does not apply to suits against collectors or their deputies for trespass or conversion.[7]

§ 100. Collection of judgments against collectors. The Revised Statutes provide:

"When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, into the performance of his of-

§ 99. [1] U. S. Rev. Stat. § 3227.

[2] *Arnson* v. *Murphy*, 115 U. S. 579, 584, 29 L. ed. 491, 493, 6 Sup. Ct. Rep. 185.

[3] Mr. Justice BLATCHFORD, speaking of suits by importers, *Arnson* v. *Murphy*, 115 U. S. 579, 584, 29 L. ed. 491, 493, 6 Sup. Ct. Rep. 185. Compare *Erskine* v. *Hohnbach*, 14 Wall. 613, 20 L. ed. 745.

[4] *James* v. *Hicks*, 110 U. S. 272, 28 L. ed. 144, 4 Sup. Ct. Rep. 6.

[5] *Cheatham* v. *United States*, 92 U. S. 85, 23 L. ed. 561.

[6] *Cheatham* v. *United States*, 92 U. S. 85, 23 L. ed. 561.

[7] *Erskine* v. *Hohnbach*, 14 Wall. 613, 20 L. ed. 745; *Supra*, § 97.

ficial duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury or other proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall upon final judgment be provided for and paid out by the proper appropriation from the treasury." [1]

This statute is constitutional.[2] After such a certificate has been given, the statute practically converts the suit against the officer in one against the United States.[3]

The certificate may be granted by a judge who did not try the case.[4] If, however, the trial judge has denied the application, another judge will rarely, if ever, grant it.[5] The certificate cannot be granted before a trial.[6] When the Government has had no notice, actual or constructive, of the suit, and no opportunity to defend, it is not concluded by the certificate of probable cause.[7] In case a writ of error is sued out no money will be paid by the Treasury upon the judgment until an affirmance and entry of judgment upon the mandate of the court of review.[8] It has been held that after judgment neither the Government nor the collector is liable for interest; [9] but upon affirmance the court of review will allow interest which will be included in the judgment of affirmance entered upon the mandate in the court below.[10] The commissioner may after judgment against the collector allow a repayment of the tax to the plaintiff even though no certificate of probable cause was granted.[11]

§ 101. Suits directly against the United States for the repayment of Taxes, after disallowance of appeal. After an appeal for the repayment of taxes has been allowed, an

§ 100. [1] U. S. Rev. Stat. § 989, U. S. Comp. Stat. 1901, p. 708.

[2] *Cary* v. *Curtis*, 3 How. 236, 245, 246, 11 L. ed. 576, 581, 582.

[3] *United States* v. *Sherman*, 98 U. S. 565, 25 L. ed. 235; *Flanders* v. *Seelye*, 105 U. S. 718, 724, 26 L. ed. 1217, 1219.

[4] *Cox* v. *Barney*, 14 Blatchf. 289, Fed. Cas. No. 3,300.

[5] *Frerichs* v. *Coster*, 23 Blatchf. 74, 22 Fed. 637.

[6] *Cox* v. *Barney*, 14 Blatchf. 289, Fed. Cas. No. 3,300.

[7] *Dunnegan* v. *U. S.* 17 Ct. Cl. 247.

[8] *Cochran* v. *Schell*, 107 U. S. 625, 27 L. ed. 543, 2 Sup. Ct. Rep. 827.

[9] *White* v. *Arthur*, 20 Blatchf. 232, 10 Fed. 80.

[10] *Cochran* v. *Schell*, 107 U. S. 625, 27 L. ed. 543, 2 Sup. Ct. Rep. 827.

[11] *United States* v. *Frerichs*, 124 U. S. 315, 31 L. ed. 471, 8 Sup. Ct. Rep. 514.

action lies upon the allowance in the Court of Claims or in some cases in a District Court as upon an account stated with the United States.[1] Before 1887 no action could be maintained against the United States in case of a disallowance of such an appeal, except perhaps upon a judgment against a collector and a certificate of probable cause.[2] The Tucker Act of March 3, 1887,[3] as amended and re-enacted in the judicial Code, gives such jurisdiction to the District Courts where the amount of the claim does not exceed $10,000,[4] and to the Court of Claims in all cases jurisdiction over "all claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable," [5] with the exception of Civil War claims. A party who has paid illegal taxes to an officer of the United States under protest may waive the tort and sue to recover the money under an implied contract.[6]

§ 101. [1] *United States* v. *Kaufman*, 96 U. S. 567, 24 L. ed. 792.

[2] *Dunnegan* v. *U. S.* 17 Ct. Cl. 247.

[3] 24 Stat. at L. chap. 359, sections 1 and 2, p. 505, U. S. Comp. Stat. 1901, p. 752.

[4] Jud. Code, § 24, subd. 20; 36 Stat. at L. 1087.

[5] *Ibid.* § 145.

[6] *Swift Co.* v. *U. S.* 111 U. S. 22, 28 L. ed. 341; *Christie Street Commission Co.* v. *U. S.* — C. C. A. —, 136 Fed. R. 326, reversing 129 Fed. R. 506; Foster's Fed. Pr. 5th ed. § 96.

PART II.

THE TEXT OF THE STATUTE.

INCOME TAX LAW OF OCT. 3, 1913.

[Public—No. 16.]

[H. R. 3321.]

An Act to Reduce Tariff Duties and to Provide Revenue for the Government, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * * *

Section II.

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income

of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become the surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall

certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: *Provided,* That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines,

5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: *Provided,* That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making

the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided,* That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together.

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however,* That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided,* That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the dis-

trict where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided,* That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further,* That in either case above mentioned no return of income not exceeding $3,000 shall be required: *Provided further,* That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: *Provided further,* That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the

tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, em-

ployers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officers of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided,* That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the dis-

trict in which return is made or to be made for him: *Provided further,* That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: *Provided further,* That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another

dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any re-

turn who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: *Provided, however,* That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payments of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: *Provided further,* That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of

Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided,* That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided.* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not

return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided,* That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further,* That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the

United States or of any State or Territory thereof, or imposed by the Government of any foreign country: *Provided,* That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy holders, on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual

premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided,* That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided, however,* That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income from said calendar year: *Provided further,* That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar

year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws

of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses

shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of

any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided,* That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided,* That any and all such returns shall be open to inspection only upon the order of the President, under rules and

regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further,* That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a mis-

demeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by

the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postoffice, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"Sec. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list,

the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next

payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: *And provided further*, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further*, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.

N. That for the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such sums as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem necessary, for information, detection, and bringing to trial and punish-

ment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of $800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States, or any of the Territories thereof: *Provided,* That no agent paid from this appropriation shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than $5 a day and $3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service.

In the office of the Commissioner of Internal Revenue at Washington, District of Columbia there shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury one additional deputy commissioner, at a salary of $4,000 per annum; two heads of divisions, whose compensation shall not exceed $2,500 per annum; and such other clerks, messengers, and employees, and to rent such quarters and to purchase such supplies as may be necessary: *Provided,* That for a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such

compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: *Provided further,* That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work.

* * * * * * * * * *

SECTION III.

* * * * * * * * * *

Provided further, That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: *And provided further,* That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: *Provided further,* That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or

accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed.

* * * * * * * * * *

U. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

PART III.

THE STATUTE ANNOTATED WITH DIGEST, OF CASES AND RULINGS.

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income

Act of August 28, 1894, § 27. The net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income. B, infra.

There shall be levied, collected, and paid, upon the annual income.—Act of Aug. 5, 1861, § 49.

That there shall be levied, collected and paid annually, upon the annual gains, profits, or income.—Act of July 1, 1862, § 90; Act of June 30, 1864, § 116.

There shall be levied, assessed, and collected * * * upon the gains, profits, or income.—Joint Resolution of July 4, 1864.

That there shall be levied, collected, and paid annually upon the annual gains, profits, and income.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

There shall be levied and collected annually, as hereinafter provided * * * upon the gains, profits, and income.—Act of July 14, 1870, § 6.

In all the legislation from 1862 to 1870, the income tax properly so called was kept separate from the taxation of bonds, dividends, and earnings of corporations; the former terminated under the Act of March 2, 1867, on Dec. 31, 1869, while the latter, under the Act of July 14, 1870, terminated Aug. 1, 1870.

Concord R. R. v. Topliff, 21 Int. Rev. Rec. 74, Fed. Cas. No. 3,093 (1874), U. S. Cir. Ct. N. Dist. N. Y., SHIPLEY and CLARK, JJ.

Railroad Co. v. Rose, 95 U. S. 78, 24 L. ed. 376 (1877), SWAYNE, J., *acc.*

The Act of Aug. 5, 1861, was repealed by the Act of July 1, 1862, and no taxes could thereafter be collected under it.

U. S. v. Tilden, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519 (1878), U. S. Dist. Ct. S. Dist. N. Y., BLATCHFORD, J.

The income tax imposed by the Act of Aug. 5, 1861, "has never been collected." CHASE, C. J., in Bennett v. Hunter, 9 Wall. 326, 19 L. ed. 672, (1869), U. S. Supreme.

The successive acts of Congress upon the subject of taxing incomes are to be construed as *in pari materia* and requiring a return for taxation as income of all gains derived from the sale of stocks in 1868, if such stocks were purchased at any time after Aug. 5, 1861, the date of passage of the first income tax act.

U. S. v. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341 (1870), U. S. Dist. Ct. Dist. Or. DEADY, J.

Gross income is not property so as to be taxable under a city charter granting power to tax property. *So held,* of insurance premiums.

City of Dubuque v. Northwestern L. Ins. Co. 29 Iowa, 9 (1870).

Under a statute providing "that no income shall be taxed which is derived from property subject to taxation," *held,* that income of a merchant dealing in leather was taxable although his stock was also taxed. The income taxed is more than income from property; it is income from industry and skill as well.

Wilcox v. County Commissioners, 103 Mass. 544 (1870).

"An income tax stands on different principles [from a tax on gross receipts]; its value is determinable; and the rules governing such tax are inapplicable to a tax on gross receipts."

Western Union Tel. Co. v. State Board of Assessment, 80 Ala. 273, 60 Am. Rep. 99 (1885).

A tax on gross receipts is not a tax on property or income.

Lott v. Ross, 38 Ala. 156 (1861).

It is double taxation "first to tax property to the extent allowed by law, and then to tax the profits derived from such property."

City of New Orleans v. Fassmann, 14 La. Ann. 878 (1859).

"There has been a difference of opinion upon the point whether the tax imposed by this section is upon the corporation, on account of its net profits, or upon the income of the stockholder or bondholder; although in the present case it is immaterial which of these alternatives is adopted. We are not aware, however, that it has ever been suggested that it might be both in succession,—one year a tax on the income of the corporation, and the next upon the same fund as the income of the individual. We do not think it an admissible construction."

Matthews, J., in Bailey v. Railroad Co. 106 U. S. 109, at p. 116, 27 L. ed. 81, 84, 1 Sup. Ct. Rep. 62 (1882).

"There is nothing very poetic about tax laws. Wherever they find property, except what is devoted to public and charitable uses, they claim a contribution for its protection, without any special respect to the owner or his occupation, and without reflecting much on questions of generosity or courtesy."

Finley v. City of Philadelphia, 32 Pa. 381 (1859).

Property in transit through the state is not taxable.

Hoyt v. Commissioners, 23 N. Y. 224 (1861).

A resident of New York having no property within the state is not taxable with respect to property without the state.

Ibid.

"A purely poll tax has no respect to property. We have no such tax. With us taxation is upon property, and so it is in all the states of the Union. So, in general, it is in all countries."

Ibid. per Comstock, J. at p. 226.

London County Council v. Attorney-General [1901] A. C. 26, 70 L. J. K. B. N. S. 77, 83 L. T. N. S. 605, 49 Week. Rep. 686, 4 Tax Cas. 265.

Per Lord MACNAGHTEN [1901] A. C. pp. 35, 36: Income tax is a tax on income. It is one tax, not a collection of taxes essentially distinct. In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on "profits or gains" in the case of duties chargeable under Sched. (A.), and the expression "profits or gains" is constantly applied without distinction to the subjects of charge under all the Schedules.

Per Lord DAVEY (at p. 45): "No doubt from the nature of the case the word 'gains' is more frequently, though not exclusively, used in Schedule (D.), But the word 'profits' is the word selected by the legislature for describing generally the subjects of taxation under the Income Tax Acts. The income tax is intended to be a tax upon a person's income or annual profits, and although it is imposed in respect of the annual value of land, that arrangement is but the means or machinery devised by the legislature for getting at the profits. I think it cannot be doubted, upon the language and the whole purport and meaning of the Income Tax Acts, that it never was intended to tax capital—as income at all events."

See also Ystradyfodwg and Pontypridd Main Sewerage Board v. Bensted [1907] A. C. 264, 76 L. J. K. B. N. S. 876, 97 L. T. N. S. 141, 5 Tax Cas. 230, 23 Times L. R. 621, per the Earl of HALSBURY [1907] A. C. p. 267: "It appears to me that there is a mixture, not to say a confusion, of thought in using the word 'profits' in a sense which is not consistent with the mode in which it is used in the statutes relating to income tax."

"The profit of a trade or business is the surplus by which the receipts from the trade or business exceeded the expenditure necessary for the purpose of earning those receipts." Per Lord HERSCHELL in Russell v. Town and County Bank [1888], L. R. 13 App. Cas. p. 424.

"Profits and gains must be ascertained on ordinary principles of commercial trading." Per Lord HALSBURY, L. C. in Gresham Life Assurance Society v. Styles, [1892] A. C. p. 316. "Profits are ascertained by setting against the income earned the cost of earning it." Per Lord HERSCHELL (p. 321).

"We cannot extend the words 'expended for the purposes of such trade,' so as to include expenses incurred to meet the con-

tingency of loss while the trade is not being carried on." Per BRUCE, J. in Rhymney Iron Co. v. Fowler [1896] 2 Q. B. 84.

"The profit upon which the income tax is charged is what is left after you have paid all the necessary expenses to earn that profit:" per Lord HALSBURY, L. C. in Ashton Gas Co. v. Attorney-General [1906] A. C. p. 12.

Per PHILLIMORE, J.: I take the word 'gains' to be no larger than the word 'profits.'" (Page 684): "If a man is in receipt of $5,000 a year, and he has to pay an annuity to the amount of $500, he is no richer than if he was in receipt of $4,500 a year, and had nothing which he was bound to pay. He is enabled to pay the $500 a year by reason of the receipt of the $5,000. He pays income tax in the first instance on $5,000 a year, and deducts the income tax when he comes to pay the annuities to the annuitants who receive the $500. But if I am wrong in that, which I admit perhaps is a large extension of the expression 'out of profits or gains,' . . . still in my view, this money is paid for the purpose of this Act out of 'profits or gains.' I am aware that it is to be paid, at any rate for the moment, though no profits are earned."

Delage v. Nugget Polish Co. [1905], 92 L. T. N. S. 683.

The trustee, under a deed of assignment for the benefit of creditors by an insolvent firm of worsted spinners, continued to supply steam power to the sub-lessees and others, for the purpose of realizing the assets to the best advantage, but did not otherwise carry on the firm's business: *Held,* that the supply of power constituted a trade or business, and income tax was payable in respect of the profits therefrom, although the whole business previously carried on by the firm had resulted in a loss.

Armitage v. Moore [1900] 2 Q. B. 363, 69 L. J. Q. B. N. S. 614, 82 L. T. N. S. 618, 4 Tax Cas. 199.

A cemetery company received payments from the proprietors of lairs, for which they undertook to keep the lairs in order in perpetuity. The directors resolved that such sums should be invested, and the interest only applied to the upkeep of the lairs, but this was not made part of the original contract:—*Held,* that the capital sums received were to be included in the amount of the assessment.

Paisley Cemetery Co. v. Reith [1898] 25 R. 1080, 35 Scot. L. R. 947, 4 Tex. Cas. 1.

Employee—Contingent Interest in Business.—Under a deed of arrangement, the owner of a business, with a view to its continuance after his death, provided (*inter alia*) that the net profits should be divided annually among certain selected employees, of whom the appellant was one, in certain shares. Ten per cent. of the profits was to be paid over to the said employees in proportion to their shares, but the remainder was not to be drawn out by them until the whole of the late owner's capital had been paid out. In the meantime, their shares were credited to their respective accounts in the books. The employees had no power to sell or dispose of their interests, which did not vest in them till the whole of the capital had been paid out. The appellant claimed abatement:—*Held,* that the business was the property of the trustees, that the employees were only employees and not partners, and that the appellant was not assessable in respect of his share of the 90 per cent. which was placed to his credit in the books but was not paid over to him, it not being a part of his income. Per Lord STORMONTH-DARLING, 8 F., p. 389: "Of course the mere fact that under a man's contract of service a portion of his salary is held up or payment of it deferred * * * does not the less make it a part of his income. The deferred portion of the salary is still salary. * * * There is all the difference between a case of that kind, and one where the fund said to form part of a man's income may, from causes over which he has no control, never be his at all."

Walker v. Reith [1906] 8 F. 381, 43 Scot. L. R. 245.

Where a bank agent lived on the business premises as caretaker, and for the purpose of the performance of his duties, his residence there was held not to be a perquisite or profit of his office within this charge. Per Lord WATSON [1892] A. C. p. 159: " I do not think it comes within the category of profits, because that word, in its ordinary acceptation, appears to me to denote something acquired, and which the acquirer becomes possessed of to his advantage—in other words, money—or that which can be turned to pecuniary accounts."

Tennant v. Smith [1892] A. C. 150, 61 L. J. P. C. N. S. 11, 66 L. T. N. S. 327, 3 Tax Cas. 158.

Under the Act of July 13, 1866, a fund retained by a bank

out of its earnings for the security of its depositors is taxable as "earnings, income, or gains."

Dollar Savings Bank v. U. S. 19 Wall. 227, 22 L. ed. 80 (1873), U. S. Supreme, STRONG, J., affirming U. S. v. Dollar Savings Bank, 15 Int. Rev. Rec. 193, Fed. Cas. No. 14,979 (1871), U. S. Cir. Ct., E. Dist. Pa., MCKENNAN, J.

All gains and profits derived from the sale of stock are taxable as income, whether specially mentioned in the act or not.

U. S. v. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341 (1870), U. S. Dist. Or., DEADY, J.

A mere exchange of property is not a sale the profits of which are to be returned for taxation.

Ibid.

Semble, otherwise if made with intent to evade the income tax law.

Ibid.

"Income and revenues," *held* in a State statute to include all earnings.

Tompkins v. Little Rock, etc. R. R. 15 Fed. 6 (1882), U. S. Cir. Ct., E. Dist. Ark., CALDWELL, J.

Under a New York statute, *held,* that "profits or income," means gross profits or income, and not net profits or income.

People v. Supervisors, 18 Wend. 605 (1836), N. Y. Supreme. People v. Supervisors of Niagara, 4 Hill, 20 (1842), N. Y. Supreme; *s. c.* affirmed on appeal, 7 Hill, 504 (1844), N. Y. Ct. of Errors.

"It is undoubtedly true that 'profits' and 'income' are sometimes used as synonymous terms; but, strictly speaking, 'income' means that which comes in, or is received from any business or investment of capital, without reference to the outgoing expenditures; while 'profits' generally mean the gain which is made upon any business or investment of capital when both receipts and payments are taken into the account. 'Income,' when applied to the affairs of individuals, expresses the same idea that *revenue* does when applied to the affairs of a state or nation; and no one would think of denying that our government has any revenue because the expenditures for a given pe-

riod may exceed the amount of receipts." BRONSON, J., in Peo v. Supervisors, 4 Hill 20, p. 23.

"Annual income" construed to mean "gross income."

[Citing Peo v. Supervisors, 4 Hill 20.]

Goldsmith v. Augusta, etc. R. R. 62 Ga. 468 (1879).

"Property may have an annual value without any income." MILLER, J., in Troy Iron and Nail Factory v. Corning, 45 Barb. 231, at p. 247 (1864), N. Y. Supreme.

Amounts received on life insurance and damages in actions of tort are not income.

Ruling, 7 Int. Rev. Rec. 59.

Money paid to the guardian of minor children by a railroad corporation, in settlement of a claim for damages by reason of the loss of the life of the father of said children is neither legacy nor income.

Ruling, 3 Int. Rev. Rec. 118.

Sums paid by a life insurance company on policies are not liable to either legacies or income tax.

Ruling, 3 Int. Rev. Rec. 140.

Legacies and successions are not returnable as income, but when a legacy or succession consists of an annuity for a term of years the annual payments constitute income and should be taxed as such; although a succession tax or a legacy tax may have been paid upon the present worth of the annuity.

Ruling, 5 Int. Rev. Rec. 138.

arising or accruing from all sources in the preceding calendar year

Ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. D, infra.

That it shall be the duty of any person * * made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return.—§ 3173 of Rev. St. as amended by this act.

For the year next preceding the time herein named.—Joint Resolution of July 4, 1864.

Received in the preceding calendar year.—Act of August 28, 1894, § 27.

to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof,

The Income Tax on corporations, is specified in G. infra.

Of every person residing in the United States.—Act of Aug. 5, 1861, § 49.

Upon the income, rents, or dividends accruing upon any property, securities, or stocks owned in the United States by any citizen of the United States residing abroad.—Act of Aug. 5, 1861, § 49.

Of every person residing in the United States.—Act of July 1, 1862, § 90.

And upon the annual gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned in the United States by any citizen of the United States, residing abroad, except as hereinafter mentioned, and not in the employment of the United States. —Act of July 1, 1862, § 90.

Of every person residing in the United States, or [and—Act of July 14. 1870] of any citizen of the United States residing abroad.—Act of June 30, 1864, § 116; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13; Act of July 14, 1870, § 6.

Of all persons residing within the United States or of citizens of the United States residing abroad.—Joint Resolution of July 4, 1864.

And a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof.—Act of July 13, 1866, § 1; Act of March 2, 1867, § 13.

There shall be levied and collected a tax of five per centum on all dividends in scrip * * to stockholders, policy-holders, or depositors, or parties whatsoever, including non-residents, whether citizens or aliens. —Act of July 13, 1866, § 1.

And a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any persons residing without the United States and not a citizen thereof. —Act of July 14, 1870, § 6.

By every citizen of the United States, whether residing at home or abroad, and every person residing therein.—Act of August 28, 1894, § 27.

An alien who resides in the United States is entitled to the exemption of the prescribed part of his income in the same manner and under the same circumstances as a native born or naturalized citizen.

Ruling, 6 Int. Rev. Rec. 18.

An alien received an inheritance in Europe and came to

this country to live. *Ruled,* that the income received on such inheritance was taxable.

Ruling, 3 Int. Rev. Rec. 140.

The wife of an alien is to be regarded as an alien herself for the purposes of taxation under the Internal Revenue Laws although she was a citizen prior to her marriage.

Ruling, 6 Int. Rev. Rec. 66.

One who buys a house in London, furnishes it, in his absence leaves a woman in charge of it, and takes his retinue to and from it, is taxable as a resident of Great Britain, although he stayed there only ten weeks and spent the rest of his time at his possessions in Ireland. He is not within a statutory exemption of persons "actually in Great Britain, for some temporary purpose only, and not with any view or intent of establishing his or her residence therein, and who shall not have actually resided in Great Britain for the period of six successive calendar months."

Attorney-General v. Coote, 4 Price, 183 [1817], Exch.

An individual *held* taxable as "residing in the United Kingdom" when he owns an estate there and lives there five months in the year of tax, although domiciled abroad and carrying on all his business abroad.

Lloyd v. Inland Revenue, 21 Scot. L. R. 482 [1884], Scot. Ct. Sess.

"A man cannot have two domiciles at the same time, but he certainly can have two residences."

Ibid., Lord Inglis at p. 484.

Attorney-General v. M'Lean (1863), 32 L. J. Exch. N. S. 101, 8 L. T. N. S. 113, 1 Hurlst. & C. 750, 9 Jur. N. S. 338. Per Pollock, C. B. (1 Hurlst. & C. p. 761): "The word 'reside' does not necessarily mean 'dwell'"; and according to Martin, B. (p. 762), there was "strong ground for contending that one who spends the day at his shop attending to his business, and may there be seen and conversed with on matters of business, and does not choose to be communicated with elsewhere, is 'residing' there."

Attorney-General v. M'Lean (1863) 32 L. J. Exch. N. S. 101, 8 L. T. N. S. 113, 1 Hurlst. & C. 750, 9 Jur. N. S. 338.

A master of a trading vessel, tenant of a house occupied by

his family and by himself when in Scotland *held,* taxable as a "resident of Great Britain," although only in the country 88 days in the year.

Young v. Inland Revenue, 12 Scot. L. R. 602 [1875], Scot. Ct. Sess.

So held, also, where the master owned his house in which his family resided, but was absent the whole year.

Rogers v. Inland Revenue, 16 Scot. L. R. 682, [1879], Scot. Ct. Sess.

a tax of one per cent. per annum upon such income, except as hereinafter provided;

the exemptions are in subdivisions B and C.

and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States.—Act of August 28, 1894, § 27.

"I agree with the opinion expressed by the late Lord Chief Justice COCKBURN in Sulley v. Attorney General, 5 H. & N. 711, that it is probably a question of fact where the trade is carried on. * * * If it is a question of fact in each case it will be impossible to make an exhaustive definition of what constitutes carrying on a trade."

Werle v. Colquhon, L. R. 20 Q. B. Div. 753 (1888); Ib. by Lord Esher, M. R., at p. 758.

A firm of wine merchants in France employed a London firm as agents. They kept no wine in England, but their name was on a window on the premises of the agents, and was in the London Directory. All orders were forwarded to France, all payments were made direct or to the agents, who forwarded the amount without carrying it to any account. *Held,* taxable, as exercising a trade in England.

Werle v. Colquhon, L. R. 20 Q. B. Div. 753 (1888).

A wine merchant living in France who has agents in England to sell his wines on a *del credere* commission, and has his name on their door and an office for his own use when he is in England is taxable in respect of "a trade exercised within the United Kingdom."

Tischler v. Apthorpe, 52 L. T. R., N. S. 814 (1885), Q. B. D., 33 W. R. 548, 2 Tax Cas. 89.

The appellants, a firm of wine merchants and shippers whose chief office was at Rheims, in France, where they resided, were in the habit of shipping wine to England for sale. An agent acted as their sole representative in England for the sale of their wine and the transactions of their business, and he received as an equivalent for his expenses in rent, clerks' salaries, and otherwise, and as remuneration, a commission on all wine sold in England. This agent carried on no other business, and the premises used by him were taken in his own name. On behalf of the appellants, he employed travellers and appointed sub-agents, who sought for orders for the appellants' wine in various parts of England, and orders were sought and taken by him as agent for the appellants. When obtained, the orders were transmitted to the agent and forwarded by him direct to the appellants at Rheims. In response to the orders so received, either the agent supplied the wine from the appellants' smaller stock of wine in England, or, if the order was for a considerable quantity, the appellants shipped the wine direct to the customer. The wines were invoiced to the customer in the appellants' own name as vendors. The appellants kept a banking account in London. All goods were shipped from France at the purchaser's risk. The appellants took all gains and suffered all losses occasioned on sale of any wine in England. The amounts due for wine sold were collected by the agent. Bills and drafts were drawn payable to the appellants' order, and when received were transmitted by the agent to the appellants at Rheims for endorsement. The appellants were assessed in the name of their agent. *Held,* that a trade was exercised within the United Kingdom.

Pommery and Greno v. Apthorpe (1886), 56 L. J. Q. B. 155; 56 L. T. 24; 35 W. R. 307; 2 Tax Cas. 182.

A French wine merchant appointed an English firm as his agents in England to canvass for orders. These orders were transmitted to their principal abroad, who exercised his discretion as to executing them. The wine was sold as lying in the foreign warehouse, the customer paying the cost of packing and carriage, and taking all risk. Payments were for the most part made direct to the French wine merchant, though sometimes

they were made through the agents. *Held,* that the contracts for the sale and the deliveries of the wine took place abroad, and that the French wine merchant who had been assessed to income tax in the name of his agents did not exercise a trade within the United Kingdom under Sched. (D.):—*Semble,* the words "having the receipt of any profits or gains" apply not only to "receiver" but also to "factor" and "agent." Grainger & Son v. Gough (1896) A. C. 325; 65 L. J. Q. B. 410; 74 L. T. 435; 44 W. R. 561; 3 Tax Cas. 462. Per Lord HERSCHELL, A. C., p. 337: "In the case of a trade exercised in this country, I think any agent who received, for the foreigner exercising such trade, moneys which included trade profit would be within the provisions of § 41." Per Lord MORRIS (p. 345): "In the present case the appellants were, in fact, as agents of their principal, Roederer, in receipt of moneys which included profits and gains, and, being so, come within the operation of § 41 of 5 & 6 Vict. c. 35." Per Lord DAVEY (p. 347): "'Having the receipt of any profits or gains' does not mean 'any part of the profits or gains,' but 'the taxable profits or gains of any business,' etc. I feel great doubt whether, on the facts of the present case, Messrs. Grainger & Son were such agents; but it is not necessary to decide that."

A foreign firm was in the habit of making consignments of goods to an English firm for sale on commission. The English firm sold the goods in their own name, received the proceeds of sale, and assumed all responsibility of payment by the purchasers; they rendered statements to the foreign firm showing full receipts, and debited the account with their charges and commission, remitting to, or drawing on, the foreign firm for the credit or debit balance, as the case might be: *Held,* that the foreign firm exercised a trade in the United Kingdom and was assessable for the profits thereof through the English firm as its agents.

Watson v. Sandie and Hull, 1 Q. B. 326; 67 L. J. Q. B. 319; 77 L. T. 528; 46 W. R. 202; 3 Tax Cas. 611 (1898).

A Belgian firm employed the appellants, who carried on business as yarn merchants and commission agents in Glasgow, as agents for the sale of their yarns in the United Kingdom. The offers received by the agents were submitted to the firm for approval, and, if approved, contracts were entered into in the

United Kingdom by the agents on behalf of the firm. The goods were consigned to the agents for delivery to the customers in the United Kingdom to whom the goods were invoiced by the agents. The agents received payment for the goods and discharged the accounts on behalf of the firm. The agents sent monthly account sales to the firm and rendered a quarterly statement for expenses and commission. They were paid by commission on the business done and were liable for one-half of the bad debts: *Held,* that the firm exercised a trade within the United Kingdom, and that the appellants as agents were rightly assessed.

Macpherson & Co. v. Moore, S. C. 1315; 49 Sc. L. R. 979; 6 Tax Cas. 107 (1912).

A partner residing in England and member of a New York firm is not taxable with respect to profits of the firm made in New York by the exportation of goods from England. The firm does not carry on a trade in England; it is a mere customer there.

Sulley v. Attorney General, 5 H. & N. 711 (1860), Exch., 29 L. J. Exch. 464, 2 L. T. 439, 8 W. R. 472, 6 Jur. (N. S.) 1018, 2 Tax Cas. 149 (1860), reversing Attorney General v. Sulley, 4 H. & N. 769 (1859), Exch.

Income from a fund in India passing through the hands of an agent in London to the plaintiff residing in France is not taxable as "gains and profits in Great Britain."

Udney v. East India Co. 13 C. B. 733 (1853), Ct. Com. Bench. See citations infra, pp. 470–481.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds, $500,000.

All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section.

See subsections D, E, I.

A subsequent clause of the same subdivision speaks of this as the "additional tax." In Great Britain it is termed "the supertax."—Finance Act 1904, 4 Edw. VII. c. 7, infra.

Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the commissioner of Internal Revenue and approved by the Secretary of the Treasury.

See subsection D and Rules and Regulations, infra.

For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax;

For what constitutes a sham corporation, see Lehigh Mining & Mfg. Co. v. Kelly, 160 U. S. 327, 336, 40 L. ed. 444, 447, 16 Sup. Ct. Rep. 307; Miller & Lux v. East Side Canal & Irrigation Co. 211 U. S. 293, 53 L. ed. 189, 29 Sup. Ct. Rep. 111; Southern Realty Investment Co. v. Walker, 211 U. S. 603, 53 L. ed. 346, 29 Sup. Ct. Rep. 211; Gelders v. Haygood, 182 Fed. 109; Kreider v. Cole, 79 C. C. A. 339, 149 Fed. 647; Re Berkowitz, 173 Fed. 1013; Re Shaffer & Stern, 185 Fed. 549; Re Muncie Pulp Co. 71 C. C. A. 530, 139 Fed. 546; Re Iron Clad Mfg. Co. 112 C. C. A. 345, 191 Fed. 831; s. c. 194 Fed. 906; Re Kernit Mfg. Co. 192 Fed. 392; Re Holbrook Shoe & Leather Co. 165 Fed. 973. Foster's Fed Pr. §§ 47, 635.

but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business.

When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are hereinafter allowed,

the net income of a taxable person shall include gains,

That in estimating said income.—Act of Aug. 5, 1861, § 49.

That in estimating said annual gains, profits, or income, whether subject to a duty of three per centum, or of five per centum.—Act of July 1, 1862, § 91.

That in estimating the annual gains, profits, or income of any person. —Act of June 30, 1864, § 117.

That in estimating the annual gains, profits, or income, as aforesaid. —Joint Resolution of July 4, 1864.

That in estimating the annual gains, profits, and income of any person.—Act of March 3, 1865, § 1.

That in estimating the gains, profits and income of any person.—Act of March 2, 1867, § 13; Act of July 14, 1870, § 7.

That in estimating the gains, profits, and income of any person.—Act of August 28, 1894, § 28.

profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid,

Whether such income is derived from any kind of property, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever.—Act of Aug. 5, 1861.

Whether derived from any kind of property, rents, interest [interests—Act of June 30, 1864] dividends, salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any source whatever, except as hereinafter mentioned.—Act of July 1, 1862, § 90; Act of June 30, 1864, § 116.

Whether derived from any kind of property, rents, interest [interests—Act of March 2, 1867] dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

Derived from any source whatever, whether within or without the United States, except as hereafter provided.—Act of July 14, 1870, § 6.

The gains, profits, and income of any business, trade, employment, office, or vocation.—Act of July 14, 1870, § 7.

Whether said gains, profits, or income be derived from any kind of

property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever.—Act of August 28, 1894, § 27.

The joint ownership of trading vessels is a trade or concern in the nature of a trade.

Attorney General v. Borrodaile, 1 Price 148 (1814), Exch., THOMPSON, C. B.

Emoluments of Office.—Bank Agent's Residence.—A banking company assigned to their agent as a residence a portion of their bank premises in respect of which they were assessed under Sched. (A.). The agent was required to reside in the building as the servant of the bank, and for the purpose of the performance of his duties:—*Held,* that the value of the residence was not an emolument of office in respect of which the agent was chargeable with income tax; and was not to be included in estimating the total amount of the agent's income for the purposes of a claim of abatement. Per Lord WATSON, [1892] A. C., p. 159: "Income arising from employment as a bank agent is assessable under Sched. (E.) in all cases where the bank which employs him is a company or society, whether corporate or not corporate, as specified in the 3rd rule."

Tennant v. Smith [1892] A. C. 150, 61 L. J. P. C. N. S. 11, 66 L. T. N. S. 327, 3 Tax Cas. 158. See also McDougall v. Sutherland (1894), 21 R. 753; 31 Scot. L. R. 630, 3 Tax Cas. 261; and Corke v. Fry (1895), 22 R. 422; 32 Scot. L. R. 341, 3 Tax Cas. 335, set out under § 163, post.

Assistant Master.—Scheme for Provident Fund.—Under a provident fund scheme an assistant master at a public school had £35 placed to his credit annually by the governors. The total amount of these sums was to be paid to him on his leaving under certain conditions, but in the meantime the annual amounts were not paid over to him:—*Held,* that the true effect of the scheme was to add £35 to his salary, and that he was liable to pay income tax on that sum under Sched. (E).

Smyth v. Stretton, [1904] W. N. 90, 90 L. T. N. S. 756, 53 Week. Rep. 288, 5 Tax Cas. 36.

or from professions, vocations,

Persons receiving profits from betting systematically carried

on by them throughout the year, are chargeable with income tax on such profits as derived from a "vocation."

Partridge v. Mallandine, L. R. 18 Q. B. Div. 276 (1886).

"The word 'vocation' is analogous to 'calling,' a word of wide signification, meaning the way in which a man passes his life."

Ibid., DENMAN, J., at p. 278.

The bursar of a college, an officer of the college, but not a member of the corporate body, was held liable to direct assessment upon the amount of his salary, as holding "an office or employment of profit" within Sched. (E.). Per CHARLES, J., [1891] 1 Q. B., p. 574: "It is suggested that the Crown will thus receive income tax twice, because the money has already paid the tax in the hands of the corporation itself. If this be so, and it seems to be by no means impossible in this case, it certainly ought not to be so, for § 54 of the Act of 1842 provides that officers of a corporation are to prepare statements of their profits and gains and that 'nothing hereinbefore contained shall be construed to require in such statement the inclusion of salaries, wages or profits of any officer of such corporation, fraternity, fellowship, company or society otherwise chargeable under this Act.' "

Langston v. Glasson, [1891] 1 Q. B. 567, 60 L. J. Q. B. N. S. 356, 65 L. T. N. S. 159, 39 Week. Rep. 476, 3 Tax Cas. 46.

businesses, trade, commerce, or sales,

Net profits realized by sales of real estate purchased within the year for which income is estimated shall be chargeable as income.—Act of June 30, 1864, § 116.

All income or gains derived from the purchase and sale of stocks or other property, real or personal; and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December.—Act of June 30, 1864, § 117.

Net profits realized by sales of real estate purchased within the year for which income is estimated shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year. * * * All income or gains derived from the purchase and sale of stocks or other

property, real or personal and of live stock, and the amount of live stock, sugar, wool, butter che[e]se. pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included.—Act of March 3, 1865, § 1.

Profits realized within the year from sales of real estate purchased within the year or within two years previous to the year for which income was [is] estimated. * * * The amount of sales of live stock, sugar, wool, butter, che[e]se, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, not including any part thereof directly consumed by the family.—Act of March 2, 1867, § 13.

Profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, fruits, vegetables or other productions, being the growth or produce of the estate of such person, but not including any part thereof consumed directly by the family.—Act of July 14, 1870, § 7.

Profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated.—Act of August 28, 1894, § 28.

The amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable, or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated.—Act of August 28, 1894, § 28.

Profits on the sales of real estate bought before the passage of the first income tax were not taxable.

Merchants' Ins. Co. v. McCartney, 12 Int. Rev. Rec. 122, Fed. Cas. No. 9,443 (1870), U. S. Cir. Ct., Dist. Mass., Lowell, J.

Under Alabama Revised Code §§ 434, 435, *held,* that income must pay tax although invested in real estate upon which a tax was levied and collected within the same fiscal year.

Lott v. Hubbard, 44 Ala. 593 (1870).

A sale of a leasehold estate is not a sale of real estate.

Ruling, 2 Int. Rev. Rec. 44.

But in assessing income, leases of lands for 99 years are to

be treated as realty if such leases are made realty by the laws of the state in which the leased lands are situated.

Ruling, 3 Int. Rev. Rec. 3.

The terms used in defining real estate in § 126, Act of June 30, 1864, do not include mules and implements of agriculture, although they are included in those terms according to the meaning given them by the Civil Code of Louisiana.

Ruling, 3 Int. Rev. Rec. 37.

A sale of underlying coal to be paid for at a certain rate for each ton mined is treated as a sale of personalty. In determining the cost, the amount paid by the purchaser may be included, but not the value of the services of himself or his family.

Ruling, 5 Int. Rev. Rec. 154.

The profits from sales of mining claims are taxable as income.

Ruling, 4 Int. Rev. Rec. 124.

Losses within the year 1866 on sales of real estate purchased since December 31st, 1863, may be deducted in a return of income of the year first above mentioned.

Ruling, 5 Int. Rev. Rec. 115.

Expenditures for labor in one calendar year cannot be deducted from the proceeds of the crop sold in the subsequent year. Losses in farming may be deducted from any business income. Expenditures for labor in a year in which no crop is sold, may be deducted from business income, but not from rents, dividends, and the like.

Ruling, 4 Int. Rev. Rec. 12.

The farmer in returning income from his farming operations should enter in his income all amounts received for animals sold, and for the wool, hides, etc., of animals which have died, provided such wool, etc., was sold. He may then deduct the sums actually paid as purchase-money for the animals sold within the year, or which have died within the year. If the animals were raised by the owner, no deduction can be allowed.

Ruling, 3 Int. Rev. Rec. 100.

Rent for land paid in produce is income. The expenses of carrying on premises so leased are to be deducted from the income of the lessee only.

Ruling, 5 Int. Rev. Rec. 154.

The profit realized on a sale of standing timber or felled timber is taxable without reference to the time when the land was purchased.

Ruling, 1 Int. Rev. Rec. 171.

When timber is sold either standing or cut, the taxable profits are arrived at by estimating the value of the land after the timber is removed and adding thereto the net amount received for the timber, and from this amount deducting the estimated value of the land on the first of January, 1862.

Ruling, 2 Int. Rev. Rec. 61, amending Ruling, 1 Int. Rev. Rec. 171.

Under former acts all profits on sales of personal property were taxable as income for the year of sale without reference to the date of purchase.

Ruling, 1 Int. Rev. Rec. 196.

These acts make a plain distinction between profits on sales of stock, and profits on sales of real estate. The taxable profits on sales of real estate, are those which accrue when the estate was purchased within the year. Profits on sales of stock are taxable without reference to the time of purchase.

Ruling, 1 Int. Rev. Rec. 139.

Under the Texas Statute, taxes are assessed on the income derived from sales of goods made in excess of their cost after allowing the statutory deductions.

Millar v. Douglass, 42 Tex. 288 (1875).

If fractions of a patent right are sold, the estimated outlay for such fractions may be deducted from the receipts of sales.

Ruling, 1 Int. Rev. Rec. 188.

The profits on the sale of a patent right are taxable as income. They are to be estimated by subtracting from the amount received the sums actually expended therefor, whether in purchasing the right and obtaining the patent, or in perfecting the invention, but no allowance can be made for the time or labor or personal expenses of the inventor.

Ruling, 1 Int. Rev. Rec. 188.

or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property,

A. before his death buys a farm from B. for $4,000. B.

makes a deed to A.'s son C. C. is chargeable with $4,000 of income.

Ruling, 3 Int. Rev. Rec. 140.

A. loans to B. $5,000 for five years, and in order to avoid the income tax takes a deed of the farm and stipulates to reconvey the property at the end of five years upon payment of $7,000. *Held,* the transaction is equivalent to the giving of a mortgage and the annual gain accruing to the lender is income.

Ruling, 3 Int. Rev. Rec. 140.

When land is leased for a term of years under a contract that the lessee shall erect a building thereon, the title to which, subject to the use of the lessee during the term, immediately vests in the lessor, the expense of erecting the building is in the nature of rent and is returnable as such in the income return of the lessor.

Ruling, 6 Int. Rev. Rec. 130.

also from interest,

In estimating the annual gains, profits, or income of any person, the interest over and above the amount of interest paid upon all notes, bonds and mortgages, or other forms of indebtedness, bearing interest, whether due and unpaid or not, if good and collectible, shall be included and assessed as part of the income of such person for each year.—Act of June 30, 1864, § 117. Cf. Ibid. § 116.

Provided that incomes derived from interest upon notes, bonds and other securities of the United States, and also all premiums on gold and coupons, shall be included in estimating incomes under this section.—Act of March 3, 1865, § 1, amending this section.

In estimating the gains, profits and income of any person, there shall be included all income derived from * * * interest received or accrued upon all notes, bonds and mortgages, or other forms of indebtedness, bearing interest, whether paid or not, if good and collectible, interest upon notes, bonds or other securities of the United States; and the amount of all premium on gold and coupons.—Act of July 14, 1870, § 7.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct

and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise."—Act of June 30, 1864, § 122.

In estimating the accounts, profits and income of any person, there shall be included all income derived from interest received upon notes, bonds and other securities except such bonds of the United States, the principal and interest of which are by the law of their issuance exempt from all Federal taxation.—Act of August 28, 1894, § 28.

On November 2, 1895, the S. A. R. granted H. J. S. a concession for the construction of a railway, and the S. A. R. guaranteed to a company which was formed to take over the railway interest at 4 per cent. on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On Feb. 18, 1902, the British Government gave notice to expropriate the railway under the terms of the concession. They recognized the validity of the concession and admitted liability to pay all arrears of interest. They paid 97,506l. 16s. 11d. as "guaranteed interest on share capital, at 4 per cent. per annum from January 1, 1899, to November 14, 1903," in addition to the other payments on the exportation. *Held,* that the 97,506l. 16s. 11d. was not a part of a sum paid by the British Government as the price of the company's undertaking; that it must be treated as the gross revenue of the company earned as a trading company from January 1, 1901, to November 14, 1903, and that after deducting certain expenses incurred by the company during the same period of benefit, the three years' average must be applied, and the income tax was payable on one-third of the balance only.

Pretoria-Pietersburg Railroad v. Elgood, 98 L. T. N. S. 741 —C. A.

When interest is in fact paid by a railroad, an assessment of a tax thereon is justified, even though the interest was paid out of a fund not included in the act, and therefore not taxable.

Improvement Company v. Slack, 100 U. S. 648, 25 L. ed. 609 (1879), Clifford, J.

The Act of July 14, 1870, taxed only interest paid, not interest merely accrued or payable.

U. S. v. Louisville, etc., R. R. 33 Fed. 829 (1888), U. S. Cir. Ct. Dist. Ky., BARR, J.

Under the Act of June 30, 1864, a railroad deducted the income tax from interest due a municipal corporation. *Held,* that the city could not recover the tax, so deducted, from the corporation. Having neglected to resist the collection of the tax by the United States from the railroad, it was precluded from raising the question of the legality of the tax as against the railroad.

Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. ed. 1043 (1870), U. S. Supreme, DAVIS, J. And see U. S. v. Railroad Company, 17 Wall. 322, 21 L. ed. 597 (1872), U. S. Supreme, in which the United States was not allowed to collect the tax from the city.

A sum paid by a loan society as interest to its depositors is taxable.

Mersey Loan, etc., Co. v. Wootton, 4 Times L. R. 164 (1887), Q. B. Div.

The funding of past-due coupons in second-mortgage bonds, *held,* not a payment of interest out of earnings so as to be taxable.

Memphis, etc., R. R. v. U. S., 108 U. S. 228, 27 L. ed. 711, 2 Sup. Ct. Rep. 482 (1882), WAITE, C. J.

The acts of Congress distinguished interest to depositors from dividends to them. *Held,* on the facts, that certain payments were made as dividends and not as interest.

Cary v. San Francisco Savings Union, 22 Wall. 38, 22 L. ed. 779 (1875), U. S. Supreme, Waite, C. J., better reported in 21 Int. Rev. Rec. 84.

Cary v. Savings and Loan Society, 154 U. S. 615, and 22 L. ed. 780, 14 Sup. Ct. Rep. 1208 (1875), WAITE, C. J., reversing San Francisco Savings and Loan Society v. Cary, 17 Int. Rev. Rec. 109, Fed. Cas. No. 12,317 (1873), U. S. Cir. Ct. Dist. Cal. SAWYER, J.

A life insurance company, receiving untaxed interest on a portion of its investments, was held liable to assessment in respect thereof, although the amount of the interest on its other investments on which tax had been deducted, exceeded the profits earned by the company. Per Lord Esher, M. R. L. R. 22 Q. B. Div. p. 450: "Interest of money ought not first to be taxed

as a separate subject-matter of taxation, and then brought again into account in arriving at the profits and gains of a business and so taxed again."

Clerical, Medical and General Life Assurance Society v. Carter (1889), L. R. 22 Q. B. Div. 444, 58 L. J. Q. B. N. S. 224, 37 Week. Rep. 346; 2 Tax Cas. 437.

A life insurance company derived the bulk of its gross income from taxed sources. The amount of this taxed income exceeded the company's net profits. The company received in addition certain interest from which tax was not deducted:—*Held,* that this interest was properly assessable under Cases III. and IV. of Sched. (D.) in § 100. Per the Lord President, 5 Tax Cas., p. 226: "I thought it had been settled beyond all possibility of doubt, that inasmuch as the Income Acts do not only deal with profit in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed, when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money, its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above charge on the profits. It must elect between the two."

Revell v. Edinburgh Life Insurance Co. (1906), 5 Tax Cas. 221.

Interest is taxable although it accrue *de die in diem,* as where a purchaser failed to pay the purchase price on the day appointed and interest was due until the price was paid. It is not necessary that the interest should be paid only annually.

Bebb v. Bunny, 1 Kay & J. 216 (1854), Chancery Chambers, Wood, V. Ch.

On November 2, 1895, the South African Republic granted a concession for the construction of a railway, and guaranteed to a company which was formed to take over the railway interest at 4 per cent. on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On February 18, the British Government gave notice to expropriate the rail-

way under the terms of the concession. They recognized the validity of the concession, and admitted the liability to pay all arrears of interest. They paid 97,506l. 16s. 14d. as "guaranteed interest on share capital at 4 per cent. per annum from the 1st Jan. 1899 to 14th Nov. 1903, "in addition to the other payments on the appropriation. *Held,* that the Crown was entitled to income tax on the sum of 97,506l. 16s. 11d.

Pretoria-Pietersburg Railway v. Elgood, 95 L. T. N. S. 468 WALTON, J.

The Secretary of State for India was empowered under certain contracts to purchase the plaintiff company's railways at the expiration of a specified number of years, either for a gross sum or for an annuity for a term of years. Before the period arrived at which the option to purchase was exercisable, negotiations were entered into between the parties for the purchase of the railways, and an agreement was arrived at, subsequently sanctioned by Parliament, by which the secretary of State purchased the railways for an annuity terminable at the end of seventy-three years, and payable half yearly to the plaintiffs, the annuity being 5l. 12s. 6d. for each 100l. of capital stock committed at a price of *l*125. This annuity was calculated on the basis of 5l. 7s. 6d., part thereof, being interest at the rate of 4l. 6s. per cent. on the 125l., and of a sum of 5s. other part thereof, being the amount required to be set aside and invested half yearly at a rate of interest in order to produce, by means of a sinking fund, the capital sum of 125l. at the end of the seventy-three years:—*Held,* first, that the annuity was partly a payment of capital by instalments and partly a payment of interest on the unpaid capital, and that income tax was payable only upon so much of it as represented interest on unpaid capital; and second by that in estimating in each half-yearly payment the amount on which income tax was payable, the proportion representing capital must be taken as continually increasing, and the proportion representing interest on unpaid capital as continually decreasing.

Secretary of State of India v. Scoble (72 L. J. K. B. N. S. 617; [1903] A. C. 299) applied East Indian Railway v. Secretary of State for India, 74 L. J. K. B. N. S. 779; [1905] 2 K. B. 413, 93 L. T. N. S. 220, 54 Week. Rep. 4, 21 Times L. R. 606—C. A.

rent,
dividends,

In computing net income for the purpose of the normal tax there shall be allowed as deduction * * * (seventh) the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided:—See section B infra.

Provided, further, that persons liable for a normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint stock companies or associations, and insurance companies, taxable upon their net income as hereinafter provided.—D. infra.

Derived from any kind of property, rents, interests—Act of June 30, 1864, Act of March 2, 1867; dividends—Act of July 1, 1862, Sec. 90; Act of June 30, 1864, Sec. 116; Act of March 3, 1865, Sec. 1; Act of March 2, 1867, Sec. 13; Act of August 28, 1894, Sec. 27.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy-holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor. —Act of June 30, 1864, § 120.

And the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same if divided, whether divided or otherwise.—Act of March 2, 1867, § 13.

Except the amount of income received from institutions or corporations whose officers as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the officer authorized to receive the same.—Act of March 2, 1867, § 13.

A share in profits can, by bargain, by given by a company to a person who is not a shareholder; and, where "participating policy holders" in a life insurance company have purchased a

share in the profits, they are persons having a right to a share in the profits, under this section.

Last v. London Assurance Corporation (1885), L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax Cas. 122.

"Without re-opening that subject for an inquiry into those differences, it may be said that the question whether the tax was, in those cases (Barnes v. Railroads and U. S. v. Railroads), a tax on the shareholder or on the corporation, was, and is, one of form rather than substance." "[The shareholder] in any and all these cases, in point of fact ultimately suffers to that extent, or loses the amount of the tax."

Miller, J., in Stockdale v. Insurance Cos. 20 Wall. 323, at pp. 329, 330, 22 L. ed. 348, 350, 351 (1873), U. S. Supreme.

The amount of taxes illegally collected from the Illinois Central Railroad as income tax on dividends to non-resident alien stockholders, should be repaid to the company, instead of to the stockholders, after deducting so much as the Government may have already paid to such stockholders.

Attorney General Pierpont, 15 Ops. Atty. Gen. 67 (1875).

Dividends declared and paid during the current year become income of shareholders. It is double taxation to tax them as income of the shareholder, and again as income of the corporation.

Board of Revenue v. Montgomery Gas Light Co. 64 Ala. 269 (1874).

Semble, that under the act of July 1, 1862, a dividend declared by a corporation but not paid was taxable against the company.

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. C. Ct. S. Dist. N. Y. Hall, J.

Under § 117 of the Act of June 30, 1864, a stockholder is not so "entitled" to undistributed profits of the corporation that he must return them as part of his income.

Ex parte Ives, 1 Int. Rev. Rec. 145, Fed. Cas. No. 7,114 (1865), U. S. Dist. Ct. D. Conn. Shipman, J.

The editor of the Internal Revenue Record comments editorially in the same issue on the foregoing decision as follows:

"If we read the opinion of Judge Shipman correctly, any number of mercantile men may organize themselves into a

corporate body for the transaction of business, and term their profits dividends; and instead of distributing their earnings, may hold them for years as a corporate fund, undistributed, or pass them to the credit of stock amount. In this way stockholders might, in the course of time, become immensely wealthy, and entirely avoid the payment of income tax on this portion of their annual gains and profits; thus defeating, it seems to us, the very object and purpose of the law."

The Commissioner of Internal Revenue refused to acquiesce in Judge SHIPMAN's ruling on the ground that the law taxed undistributed earnings as income, that the corporation was not liable to the income tax, and therefore that they must be taxed as income of the stockholder.

Ruling, April 28, 1865, 1 Int. Rev. Rec. 157.

"A stock dividend is unlike a cash dividend, in that the assets of the corporation are not divided, or the property therein changed, but the stock is increased and divided, and the separate holdings of the stockholders increased to the extent of the dividend declared."

Commissioners of Sinking Fund v. Buckner, 48 Fed. 533 (1891) U. S. C. C. Ky. BARR, J.

A railroad company foreclosed a mortgage given to secure loans. Having taken title to the mortgaged premises, it issued certificates to its stockholders representing their *pro rata* interest in the mortgaged property. *Held,* that such certificates were not dividends.

Chicago, etc., R. R. v. Page, 1 Biss. 461, Fed. Cas. No. 2,668 (1864), U. S. Cir. Ct. N. Dist. Ill. DAVIS and DRUMMOND, JJ.

When a corporation has actually made dividends from its profits or property without formally declaring them, by adding them to the stock of the shareholder, or where it has declared dividends and returned them, whether earned or not, the sum thus added to the stock of the shareholders, or the sum thus declared and set apart to him, becomes the measure of the tax, the legislative intent being to make the profit transferred by the corporation to its shareholders from its treasury or property the measure of taxation of its capital. Hence, it is clear that a mere nominal or arithmetical increase of the shares, without a transfer to the shareholders of anything out of the

treasury or property of the corporation, is not a dividend or profit either made or declared. *So held* of watered stock.

Commonwealth v. Pittsburgh, etc. R. R. 71 Pa. 84 (1873).

A corporation issued certificates to its stockholders that each holder was "entitled to——dollars payable ratably with the other certificates * * at the pleasure of the company out of its future earnings, with dividends thereon at the same rates and times as dividends shall be paid upon the shares of the capital stock of said company." They were transferrable on the books of the company. They were intended to be a distribution of prior earnings and to "approximate as near as possible to stock without exposing the company to the hazard of an actual addition to the same in violation of law." *Held,* taxable as scrip dividends.

Bailey v. Railroad Co. 22 Wall. 604, 22 L. ed. 840 (1874), U. S. Supreme, Clifford, J.

It is competent for the company to show by collateral evidence what portion of earnings distributed by means of the certificates was earned during the period covered by the income, and what portion was earned prior thereto. A declaration of dividends is not conclusive proof that they were earned within the period covered by the tax.

Bailey v. Railroad Co. (second appeal), 106 U. S. 109, 27 L. ed. 81, 1 Sup. Ct. Rep. 62 (1882), Matthews, J.

"The law conclusively assumes * * that a dividend declared is a dividend earned." *Semble.* Ibid.

As between life-tenant and remainderman, stock dividends constitute increase of capital, not income.

Gibbons v. Mahon, 136 U. S. 549, 34 L. ed. 525, 10 Sup. Ct. Rep. 1057 (1889), Gray, J.

"[In Bailey v. Railroad Co. 22 Wall. 604, 22 L. ed. 840,] the question at issue was not between the owners of successive interests in particular shares, but between the corporation and the government, and depended upon the terms of a statute carefully framed to prevent corporations from evading payment of the tax upon their earnings." Ibid. at p. 560.

A corporation began with a capital of $100,000, which was increased to $1,000,000 out of its profits, the increase being invested in improvements and enlargement of its business. *Held,* that $900,000 increase was taxable as dividends.

Lehigh, etc. v. Commonwealth, 55 Pa. 448 (1867).

When a contract is made with certain trustees to build a railroad and divide the profits among the stockholders of a certain corporation, which guarantees the trustees against loss, and agrees to advance funds and receive a commission, *held* that the profits received by the trustees and distributed among the stockholders are not taxable as dividends of the corporation.

Credit Mobilier v. Commonwealth, 67 Pa. 233 (1870).

The relator invested surplus profits in real estate and gas mains, and issued certificates to the shareholders to the effect that they had a ratable interest therein. *Held,* that such invested profits were property of the corporation, and taxable as such.

People ex rel. Gas Co. v. Assessors, 76 N. Y. 202 (1879).

Proof that capital stock has been increased is not even *prima facie* evidence that such increase is a stock dividend or a division of actual profits.

Commonwealth v. Erie, etc. R. R. 74 Pa. 94 (1873).

The whole assets of a bridge company having been taken by the state in condemnation proceedings, and the compensation having been divided among the stockholders ratably, *held,* that the surplus over the capital stock was taxable as dividends.

Matson Bridge Co. v. Commonwealth, 117 Pa. 265, 11 Atl. 813 (1888).

The acts of Congress distinguished interests to depositors from dividends to them. *Held,* on the facts, that certain payments were made as dividends and not as interest.

Cary v. San Francisco Savings Union, 22 Wall. 38, 22 L. ed. 779 (1874), U. S. Supreme, Waite, C. J. better reported in 21 Int. Rev. Rec. 84.

Cary v. Savings and Loan Society, 154 U. S. 615, and 22 L. ed. 780, 14 Sup. Ct. Rep. 1207 (1875), Waite, C. J., reversing San Francisco Savings and Loan Society v. Cary, 17 Int. Rev. Rec. 109, Fed. Cas. No. 12,317 (1873), U. S. Cir. Ct. Dist. Cal. Sawyer, J.

When the profits of a bank are applied in payment of its stock, such payments are dividends, and taxable as such.

State v. Farmers' Bank, 11 Ohio, 94 (1841).

In construing a State statute, a tax on capital stock measured by dividends was *held,* not a tax on dividends.

Phœnix Iron Co. v. Commonwealth, 59 Pa. 104 (1868).

Under the Act of June 30, 1864, the tax was collectible on the interest of a stockholder in the profits of a corporation not included in dividends but invested partly in real estate, partly in machinery and raw materials, and partly in the payment of debts incurred in previous years.

Collector v. Hubbard, 12 Wall. 1, 20 L. ed. 272 (1870), U. S. Supreme, CLIFFORD, J.

When a corporation declares a dividend payable in gold, the tax upon such dividends must be paid in gold or its equivalent in currency.

Ruling, 2 Int. Rev. Rec. 100.

There is no tax on the mere doubling of the shares of a corporation when no more property is represented by the additional number of shares than before the addition was made. On an increase, where the new shares represent the gains of the company made during the year and added to the capital, a tax should be assessed.

Ruling,1 Int. Rev. Rec. 188.

Where a stock dividend is in reality a division of the accumulated earnings of several years, so much of the amount as is clearly shown to the assessor to be due to the profits of previous years may be omitted from the return. Such stock should be returned at its par value if it remain unsold; otherwise at its actual value.

Ruling, 1 Int. Rev. Rec. 155.

The profits acquired by the winding up of a corporation, and the division of its assets, are taxable as income.

Ruling, 2 Int. Rev. Rec. 138.

Although §§ 120 and 122 of the Act of June 30, 1864, clearly contemplate that the Government shall receive five per cent. of the whole amount paid out by any of the companies enumerated on account of dividends or interest upon bonds, it has been contended by some companies that as they were merely authorized and not required to withhold the tax from such dividends or interest, it was competent for them to pay the tax, and charge the same to their expense account, and make the payment to the stockholder or bondholder free of tax. The result of this construction is to give the Government five dollars for every one hundred dollars paid to the stockholder, instead of five dollars for every ninety-five dollars thus paid.

When the company adopts that construction, the deduction provided for in the 116th and 117th sections, should not be allowed.

Ruling, 1 Int. Rev. Rec. 116.

Whenever a stockholder makes his income return under § 116, he should return as his income from dividends, not only the $95 from $100 paid to him by the company, but also the $5 paid for him to the Government.

For example:

A's dividend or share of the profits in a railroad company is $4,000. Of that sum the company withholds and pays into the Government five per cent., that is $200, the remaining $3,800 is paid to A. In addition to income from dividends, he has an income of $800 from other sources. From this he is entitled to deduct $600, leaving $200 as taxable income from other sources. To this add the $3,800 received directly from the company, and he has a taxable income of $4,000. Five per cent. upon that sum is $200. From this deduct the $200 withheld by the company and nothing remains. The Government has received no tax whatever from the $200 taxable income from other sources.

Ruling, 2 Int. Rev. Rec. 100.

securities,

There shall be included all income derived from interest upon notes, bonds, and other securities.—Act of August 28, 1894, § 28.

Interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest.—§ 28, post, p. 287.

There shall be included all income derived from interest upon notes, bonds and other securities of the United States.—Act of March 2, 1867. § 13.

There shall be included all income derived from any kind of property, rents, interest received or accrued upon all notes, bonds, and mortgages. —Act of July 14, 1870, § 7.

or the transaction of any lawful business carried on for gain or profit,

Gains derived from, and losses incurred by, the sale of stocks, are regarded as gains and losses in business without reference to the time during which the stocks are held. Interest in dividends derived from stocks is regarded as income derived from fixed investments, without reference to the time during which such stocks are held; but when gains derived from sales

of stocks involve interest received or accrued, such gains may be regarded as derived from business alone. Salaries, except when specially provided for by statute, are regarded as income from business. The value of property used in business, less the amount of insurance, may be deducted when lost from the gains and profits in business.

Ruling, 3 Int. Rev. Rec. 188.

or gains or profits and income derived from any source whatever,

All other gains, profits, and income derived from any source whatever.—Act of August 28, 1894, § 28.

All other gains, profits, and income derived from any source whatever.—Act of March 2, 1867, § 13.

All other gains, profits, and income drawn from any source whatever.—Act of July 14, 1870, § 7.

Rent saved by reason of the fact that a person occupies a house rent-free is not taxable.

Tennant v. Smith [1892], A. C. 150, H. L.

Profits realized during the year are to be returned and assessed without regard to the fact that they had been produced by the labors of previous years.

Ruling, 2 Int. Rev. Rec. 44.

Wages of a minor son, if the parent has power to control the same, must be included with the income of the parent, and taxed as such.

Ruling, 1 Int. Rev. Rec. 156.

S. was a partner in business with F. His share of the profits was about $5,000. The firm dissolved, and S. gave F. the amount of his profits in payment for F.'s share in the good will of the firm. *Held,* that S. should pay an income tax on $5,000, although that was reinvested in the business, and that F. should also pay an income tax on $5,000.

Ruling, 4 Int. Rev. Rec. 46.

When a vendor consents to receive the purchase price in annual installments, such installments are not taxable as "annual payments." They are principal and not income.

Foley v. Fletcher, 3 Hurlst. & N. 769 (1858), Exch.

including the income from but not the value of property acquired by gift, bequest, devise, or descent:

Money and the value of all personal property acquired by gift or inheritance.—Act of August 24, 1894, § 28.

Gifts of personal property made *ante mortem* as advances since the passage of the revenue laws, should be treated as income.

Ruling, 3 Int. Rev. Rec. 133.

The value of an annuity to arise from a fixed principal should be estimated by assuming the rate of interest upon money at 6 per cent without reference to the legalized rate of any particular state.

Ruling, 4 Int. Rev. Rec. 47.

A gift is not taxable as an "annual profit or gain arising from any kind of property" or "from any profession, trade, employment, or vocation." *So held* of an allowance to a curate "in recognition of faithful service," renewable at the discretion of a committee and conditional upon his collecting half the amount as donations to the fund.

Turner v. Cuxon, L. R. 22 Q. B. Div. 150 (1888), Coleridge, C. J.

An annual gift by parishioners to their clergyman *held,* a payment in respect of his office, and so taxable as income.

Inland Revenue v. Strang, 15 Scot. L. R. 704 (1878); Sc. Ct. Sess. Outer House, Ld. Curriehill.

Amounts paid to clerks of banks, etc., as gifts, are clearly paid with reference to services rendered, and should be taxed as income.

Ruling, 7 Int. Rev. Rec. 35.

All gifts which are in the nature of compensation for services rendered, whether made in accordance with a previous understanding or with an annual custom, are taxable as income.

Ruling, 1 Int. Rev. Rec. 150.

Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured. on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract or upon surrender of contract, shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business,

When any person rents buildings, lands, or other property, or hires labor to carry on [cultivate—Act of March 3, 1865] lands, or to conduct

any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted.—Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

Also the amount paid out for usual or ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted.—Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

The amount actually paid for labor or interest by any person who rents land or hires labor to cultivate land, or who conducts any other business from which income is actually derived.—Act of March 2, 1867, § 13.

The amount paid out for usual or [and—Act of July 14, 1870] ordinary repairs.—Acts of March 2, 1867, § 13; Act of July 14, 1870, § 9.

The amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived.—Act of July 14, 1870, § 9.

In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted.—Act of August 28, 1894, § 28.

Strong & Co. v. Woodifield, [1906] A. C. 448, 5 Tax Cas. 215, [1906] Per Lord Davey, p. 453: "It is not enough that the disbursement is made in the course of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits."

A rubber company, of whose estate only a portion was as yet producing rubber, claimed to deduct the expenses incurred annually in weeding, watching, etc., those portions of the estate where the trees had not yet reached the rubber-bearing age:—*Held,* that the expenses were deductible, and that the fact that they were incurred to earn profit in future years, and were not referable to profits earned in the year in which they were incurred, did not prevent them from being proper deductions; and that, as they were annually recurring expenses, they were prima facie not capital expenditure, but income expenditure:

Vallambrosa Rubber Co. v. Farmer [1910] S. C. 519, 47 Scotch L. R. 488, 5 Tax. Cas. 529.

Subscriptions to Coal Owners Association.—A colliery company were members of a coal owners association, to which they paid a subscription. The object of the association was to indemnify its members in the event of deficiency or stoppage of output caused by strikes, etc.:—*Held,* that the subscription was not money laid out for the purposes of the trade, and could not be deducted:

Rhymney Iron Co. v. Fowler, [1896] 2 Q. B. 79, 65 L. J. Q. B. N. S. 524, 44 Week. Rep. 651, 3 Tax Cas. 476.

A brewery company, upon being assessed under Schedule D of the Income Tax Act, 1853, in respect of the profits of their trade, claimed to deduct from the amount of those profits the sum expended by them as landlords of certain "tied" houses in respect of the proportion of the compensation levy imposed upon them by Section 3 of the Licensing Act 1904. The tied houses were owned by the company and were let to tenants upon the terms that the tenants should only deal with the company in the way of their business, and should buy all the beer consumed on the premises from the company, the tenants paying a lower rent in consideration therefor. It was found as a fact that the profits of the company were greatly increased by the employment of the houses, and that they were necessary in order to enable the company to carry on their business profitably: *Held* (the House of Lords being equally divided in opinion on the question), that the respondents were entitled to the deduction claimed.

Smith v. Lion Brewery Co., 80 L. J. K. B. N. S. 566, [1911] A. C. 150, 104 L. T. N. S. 321, 75 J. P. 273, 55 S. J. 269; 27 L. J. R. 261, 5 Tax Cas. 568, H. L. (E).

S. & L. a firm of tube manufacturers, entered into an agreement with W., another firm of tube manufacturers whereby in return for the right to nominate a majority of the directors of W., S. & L. undertook to pay to W. each half year such sum as might be necessary to make up any deficit in the dividend on W.'s preference shares. In pursuance of this agreement, in the year 1904 S. & L. made payments to W. of sums amounting to £841. In estimating their profits for that year for income tax purposes, S. & L. claimed to deduct from the profits this sum of £841. The Income Tax Commissioners held that S. & L. had expended this sum for the purposes of their trade and that they might sell their goods at a better price, and allowed the deduction: *Held,* that the deduction had been rightly allowed.

Moore v. Stewarts and Lloyds, 8 F. 1129, Ct. of Sess.

A corporation required by law first to supply a town with gas was permitted thereafter to supply private consumers with gas. It received [so far as the report shows] no compensation

from the town, but the receipts from private consumers produced a profit on the whole enterprise. *Held,* that the expense of lighting the town could not be deducted. Such expense is not for the purpose of the business; it is merely to enable the corporation to enter upon the business.

Dillon v. Corporation of Haverfordwest, [1891] 1 Q. B. 575.

When a lessee pays a large premium at the beginning of his term for the lease, such payment is not to be regarded as rent paid in advance. He is not, therefore, entitled to deduct an aliquot part of such premium as an annual expense. He may, however, deduct the fair rental value, if it is greater than the rent actually paid.

Gillatt v. Colquhoun, 33 Week. Rep. 258 (1885), Q. B. D.

Under the terms of section 117 of the Act of June 30, 1864, the salary of a person employed to take care of real estate would be deductible from such income of the persons paying the salary as is derived from the estate in question. The person receiving the salary should return the same as part of his income subject to tax.

Ruling, 3 Int. Rev. Rec. 102.

Expenses of collection, *necessarily incurred,* may be deducted from rents.

Stevens v. Bishop, L. R. 20 Q. B. Div. 442 [1888].

[Distinguished in the Duke of Norfolk v. Lamarque, on account of the words in italics.]

Expenses of collection are not to be deducted from rents.

Duke of Norfolk v. Lamarque, L. R. 24 Q. B. Div. 485 [1890].

"No analogy whatever can be drawn from the profits of manufactures or mercantile business, because there the word 'profits' necessarily means that which is earned after a certain outlay made for the purpose of earning it, and it cannot be said that expenditure in the collection of rent is money spent for the purpose of earning the rent—it is simply money spent for getting in that which belongs to the owner." Ibid., Pollock, B., at p. 490.

Legal expenses arising from ordinary business may be deducted as expenses of the business.

Ruling, 7 Int. Rev. Rec. 59.

Wages paid for productive labor, *i. e.* labor in the manufacture of articles for sale, may be deducted, but not wages paid for unproductive labor.

Ruling, 7 Int. Rev. Rec. 58.

Where a party owns unimproved property from which no income is derived, expenses, repairs, insurance, interest, etc., are deducted from whatever income has accrued to him; but the expense of hired labor can be deducted from profits of only such business as employed in the labor.

Ruling, 1 Int. Rev. Rec. 154.

Wages of his minor children are not deductible from the income of a farmer; but the wages of adult children are.

Ruling, 7 Int. Rev. Rec. 58.

A bank is entitled to deduct as an expense of its business the rental value of premises occupied by it, although a part of such premises are occupied by its officials rent free.

Russell v. Town, etc., Bank, L. R. 13 App. Cas. 418 [1888], H. L.

Voluntary contributions by a minister towards the stipend of his assistant minister, were held not to be allowable deductions under § 52 of the Income Tax Act, 1853, not being expenses necessarily incurred in the personal performance of his duty.

Lothian v. Macrae [1884], 12 R. 336, 22 Scot. L. R. 219, 2 Tax Cas. 65.

Royalties for use of Patent—The Finance Act, 1907, § 25 (1), provides that: "In estimating, under any Schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorized, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due." The appellant company were assessed for the year 1907–8 on the average of their profits for the three years ended September 30th, 1906. During each of the three years they had paid royalties for the user of patents, but these payments ceased on January 1st,

1907, a date prior to the operation of the Finance Act, 1907. In arriving at the assessment for the year 1907–8, the royalties paid in the years of average were disallowed as a deduction, the disallowance being based on § 25 (1) of the Finance Act, 1907:—*Held,* by the Court of Appeal, that § 25 of the Finance Act, 1907, must be read as a whole, and that as it was not a charging section, but a section for improving the machinery of collection, it did not operate to prohibit the deduction of royalties when the person assessed was debarred from reimbursing himself in the manner contemplated by the section. The prohibition to deduct was dependent on the existence of facilities for recoupment.

Lanston Monotype Corporation v. Anderson, [1911] 2 K. B. 1019, 80 L. J. K. B. N. S. 1351, 105 L. T. N. S. 398, 5 Tax Cas. 675.

A payment of capital invested in a business cannot be deducted.

City of London Contract Co. v. Styles, 4 Times L. R. 51 [1887], Ct. App., affirming s. c. 3 Times L. R. 512 [1887].

A railway company claimed as deductions, (1) a sum expended upon the improvement of the permanent way of one section in order to bring it up to the standard of the main line; and (2) a sum representing the cost of the extra weight in relaying another portion of the line with steel in place of iron rails, and with chairs of additional weight. In the books of the company these sums were charged against capital:—*Held,* that the sums in question were properly charged against capital, and were not allowable deductions.

Highland Rail. Co. v. Balderston [1889], 26 Scot. L. R. 657, 2 Tax Cas. 485.

The appellant company carried on the business of zinc smelting, for which purpose large quantities of blende were required. To supplement their own supply, a new company was formed for acquiring and working, in the interests of the appellant company, certain mines containing blende. Practically all the shares of the new company were owned by the appellant company. From time to time the appellant company made advances to the new company by way of loan at interest, for the purpose of working these mines, the more recent advances being

alleged to be made as against blende to be delivered. A certain quantity of blende was delivered, but, after giving credit in respect thereof, there remained a balance due to the appellant company. The new company subsequently went into liquidation, and the appellant company lost the whole of this balance. In estimating the amount of the profits from their business for assessment, the appellant company claimed to deduct this balance as being a bad debt: *Held,* that the advances were an investment in a separate concern and a capital expenditure, and not money laid out exclusively for the purpose of the trade, or advanced against specific parcels of goods to be delivered, and accordingly, that the deduction claimed was not allowable.

English Crown Spelter Co. v. Baker [1908], 99 L. T. N. S. 353, 5 Tax Cas. 327.

Expenses of Applications for New Licenses.—A company of brewers expended certain sums for law costs, printing, and advertising, etc., in connection with applications made by them to the licensing justices for the grant of new and additional licenses to houses owned and leased by them, and also to houses not owned by them, but for which they conducted the applications for the purpose of maintaining and increasing their trade. Payments were also made to owners of public houses for the right to call for a surrender of the licenses attached to such houses, if required by the licensing justices to be surrendered before the grant of new licenses for new houses. Where the applications were successful, the expenses were added to the cost of the new houses. The company claimed, in computing their profits, to deduct the sums paid as above in cases where the applications for new licenses were unsuccessful, as a necessary annual trade expense: *Held,* that the sums in question were expended on account of capital, and were not an allowable deduction.

Southwell v. Savill Brothers, [1901] 2 K. B. 349, 70 L. J. K. B. N. S. 815, 85 L. T. N. S. 167, 49 Week. Rep. 682, 4 Tax Cas. 430.

Expenses of Removal.—A company, which carried on the business of buying and selling granite, moved their business premises, and defrayed the whole cost out of income.

In calculating their profits for assessment under Sched.

(D.), the company claimed to deduct the cost of carting their granite from the old premises to the new, and of taking down and re-erecting two cranes: *Held,* that they were not entitled to do so. Per Lord President, 8 F. p. 56: "Supposing these parties had not had a crane, and in fitting up their new yard had found it necessary to buy one, its cost is not a deduction which would have been allowed." Per Lord McLaren (p. 57): "The cost of transferring plant from one set of premises to other and more commodious premises is not an expense incurred for the year in which the thing is done, but for the general interests of the business. * * * Suppose a person is so imprudent as not to insure his business premises, . . . and that they are destroyed by fire, and he has to replace them, he would not be allowed to charge the reinstatement against the income of the year."

Granite Supply Association v. Kitton [1905], 8 F. 55, 43 Scotch L. R. 65, 5 Tax Cas. 168.

Consideration for Transfer of Business, etc.—Part of the business taken over by a company consisted of unexecuted contracts, and guaranteed interest was paid to the shareholders of other companies, without deducting income tax, during the construction of works contracted for: *Held,* that the price paid for such contracts was not a deduction from the profits, and per Lord Esher, M. R., that the interest was also not a deduction.

City of London Contract Corporation v. Styles [1887], 4 Times L. R. 51, 2 Tax Cas. 239.

Held, that no deduction was allowable on account of the consideration paid to another Mexican bank for the transfer of certain concessions involving the right of issuing bank notes.

London Bank of Mexico and South America v. Apthorpe [1891] 2 Q. B. 378, 60 L. J. Q. B. N. S. 653, 65 L. T. N. S. 601, 39 Week. Rep. 564, 3 Tax Cas. 143.

The Royal Insurance Company acquired the business of the Queen Insurance Company, it being agreed that the manager of the latter should be taken into the service of the former, with liberty for the Royal Insurance Company to commute his salary by payment to the management of a gross sum. Shortly after the transfer, the Royal Insurance Company paid the manager a sum in commutation of his salary: *Held,* that the payment formed part of the consideration for the transfer of the

business, and being capital expenditure, could not be deducted in ascertaining the profits. Per Lord HALSBURY, L. C. [1897], A. C. p. 7: "Under these circumstances, it appears to me that this comes within the express language of the statute; it is capital expenditure—it is part of the purchase-money for the concern. It is perfectly immaterial whether it was entirely so or partly so, because if it was partly so it is enough to establish the proposition which I am maintaining."

Royal Insurance Co. v. Watson [1897] A. C. 1, 66 L. J. Q. B. N. S. 1, 75 L. T. N. S. 334, 3 Tax Cas. 500.

Sinking Fund.—The appellant company were empowered under their private Act to raise money upon mortgage of the undertaking, for the purpose of carrying out a Government contract, and were required to establish a sinking fund for the extinction of the mortgage debt. A sum was to be set aside into the sinking fund out of each quarterly payment received under the contract or out of other moneys belonging to the company:—*Held,* following Mersey Docks v. Lucas [1883], L. R. 8 App. Cas. 891, that the sums thus set aside were not allowable as a deduction in arriving at the company's assessable profits.

City of Dublin Steam Packet Co. v. O'Brien [1912], 6 Tax Cas. 101.

A steamship owned by a steamship company, and valued at £37,000, was insured with underwriters at £34,500, the company taking the risk of loss to the amount of £2,500. The company transferred from revenue account to their insurance fund, out of annual profits, a sum equivalent to the amount of premium that would have been payable to an underwriter on a risk of £2,500. The steamship was wrecked and became a total loss, and the company recovered the sum of £34,500 from the underwriters. The company claimed, in ascertaining their profits, to deduct the said sum of £2,500 (less the amount received as salvage) as being the amount of the risk undertaken by them, and transferred from their insurance fund to capital account:—*Held,* that the company were not entitled to make the deduction in question, the loss being a loss of capital. Per Lord MCLAREN, 44 Sc. L. R., p. 717: "This is not marine insurance in the legal sense of the term, because there is no contract of insurance, but only a reservation of a sum out of the profits of the business to provide for future losses:"

Inland Revenue v. Western Steamship Co. [1907], S. C. 1005; 44 Scot. L. R. 715.

Where under a policy of life insurance and an agreement between the parties thereto, the insured has paid only one-half of the premium in cash and the other half by means of a loan from the insurer repayable on demand and bearing interest (the principal and interest being charged upon the policy), he is only entitled under section 54 of the British Income Tax Act, 1853, to deduct the amount paid by him in cash in respect of premium from his assessable income (Lord JAMES OF HEREFORD dissenting).

Hunter v. Atty.-Gen., 73 L. J. K. B. N. S. 381; [1904] A. C. 161; 90 L. T. N. S. 325, 52 Week. Rep. 593, 20 Times L. R. 370—H. L. (E.)

By a policy of assurance, known as a double endowment assurance policy, the insurance company, in consideration of the payment of annual premiums by the assured, agreed to pay 100l. to his legal personal representatives if he died before a specified date, and to pay 200l. to the assured himself if he were alive on that date:—*Held,* that this was an "insurance on his life" within the meaning of Section 54 of the Income Tax Act, 1853, and that, consequently, the assured was entitled to deduct the whole amount of the premiums from his profits and gains in respect of which he was liable to be assessed to the income tax under Schedule D.

Gould v. Curtis, 81 L. J. K. B. N. S. 634 [1912] 1 K. B. 635, 106 L. T. N. S. 680, 28 Times L. R. 274—HAMILTON, J.

not including personal, living, or family expenses;

That in estimating the annual gains, profit, or income, of any person, under the act to which this act is an amendment [Act of July 1, 1862], the amount actually paid by such person for the rent of the dwelling-house or estate on which he resides shall be first deducted from the gains, profit, or income of such person.—Act of March 3, 1863, § 11.

Also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person, or by his family, in his own right or in the right of his wife, shall not be included and assessed as part of the income of such person.—Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

Except the rental value of any homestead used or occupied by any person or by his family in his own right, or in the right of his wife.—Act of March 2, 1867, § 13.

The amount actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family.—Act of March 2, 1867, § 13.

Not including the rental value of the homestead used or occupied by any person, or by his family.—Act of July 14, 1870, § 7.

The amount paid for rent of the house or premises occupied as a residence for himself or his family.—Act of July 14, 1870, § 9.

If a taxpayer rents his own house and is subjected to pay rent elsewhere on account thereof, he must return the rent received, and will be allowed to deduct the amount of rent paid.

Ruling, 4 Int. Rev. Rec. 46.

When a taxpayer owns a homestead the rental value of which is not returned as income, he should not be allowed to deduct the amount paid by him for the rent of the house or premises occupied as a residence for himself and his family elsewhere.

Ruling, 5 Int. Rev. Rec. 154.

When a tax-payer rents a furnished house, rent for the furniture should not be deducted.

Ruling, 7 Int. Rev. Rec. 59.

A lady made a profit by letting her furnished house for two months, and when assessed for income tax thereon, claimed to deduct the rent of another house which she had taken to reside in during that period:—*Held,* that this rent was not an expense necessarily incurred in earning the profit, and accordingly that the deduction should be disallowed.

Wylie v. Eccott, Ct. Sess. S. C. 16 (1913).

A schoolmaster and his wife, the schoolmistress, were paid a joint salary, in respect of which the husband was assessed under Sched. (E.), and he claimed, under § 51 of the Income Tax Act, 1853, to deduct the wages and cost of maintenance of a domestic servant, whose employment was necessary in order that the duties of his household might be carried on while his wife was engaged in the school:—*Held,* that the deduction could not be claimed:

Bowers v. Harding, 1 Q. B. 560, 60 L. J. Q. B. N. S. 474, 64 L. T. N. S. 201, 39 Week. Rep. 558, 3 Tax Cas. 22 [1891].

It was held that under section 52 of the Income Tax Act, 1853, a minister was entitled to deduct from his stipend (1) his

expenses of visiting members of his congregation; (2) expenses of attending church meetings where part of his duty was enjoined on him by his superiors; (3) stationery; (4) communion expenses. He was not entitled, however, to make any deduction in respect of that part of his dwelling-house which was used as an office for the business of his profession, or for the expense of books.

Charlton v. Commissioners of Inland Revenue [1890], 17 R. 785, 27 Scotch L. R. 647.

Minister's Expenses.—Keeping Horse and Carriage, etc.—A parish minister claimed repayment of income tax under § 52 of the Income Tax Act, 1853, in respect of (1) the cost of keeping a horse and carriage; (2) expenses incurred in obtaining an augmentation of stipend; (3) outlays for pulpit supply during holidays; and (4) an allowance granted by the Court of Teinds for communion elements. The commissioners allowed the first and last, but disallowed the others. On appeal, the court upheld the decision of the commissioners, *holding* that (1) and (4) were questions of fact which the statute laid on the commissioners to decide, and that the others were *not* expenses necessarily incurred solely in the personal performance of his duty.

Jarding v. Gillespie [1907], S. C. 77, 44 Scotch L. R. 136, 5 Tax Cas. 263.

The expense of season tickets on railways held by persons living out of town, who do business there, going by the morning and returning by the evening train, can be deducted from income, so far as the assessor shall consider such expenses as properly chargeable to expenses of business.

Ruling, 1 Int. Rev. Rec. 172.

Expenses of conveyance in the prosecution of business, but not hotel bills or other expenses of living, are to be deducted as the expenses of the business.

Ruling, 7 Int. Rev. Rec. 60.

Traveling expenses of directors from their residences to the office of their company were held to be inadmissible deduction.

Revell v. Directors of Elworthy Brothers & Co. (1890) 3 Tax Cas. 12.

Traveling Expenses.—A solicitor resided and carried on his profession at Worcester; he was also clerk to the justices at Bromyard, and consequently had to travel frequently between

those two places:—*Held,* that he was not entitled to deduct from the emoluments of his office such traveling expenses:

Cook v. Knott [1887], 4 Times L. R. 164, 2 Tax Cas. 246.

Contribution to Thrift Fund.—Under powers conferred by Act of Parliament, a municipal corporation established a scheme for a thrift fund for the benefit of their officers. Under the scheme, persons entering the service of the corporation after a certain date were to contribute, and the corporation might deduct a certain part of their salaries. The moneys so contributed were held upon certain trusts in the contributers' favour. Persons in the service on the date in question, might on their own application, be admitted to the benefit of the fund upon the same terms, but no persons so admitted were to cease to contribute while in such service. A person in the service on the date in question, applied to be admitted to the benefits of the fund, and another person who had entered the service after the date in question subsequently made payments to the fund under the scheme:—*Held,* that the payments were not "sums payable or chargeable by virtue of any Act of Parliament," or sums "really and bona fide paid and borne by the party to be charged," within § 146, Sched. (E), r. 1, and accordingly could not be deducted from the amounts of the salaries for the purpose of assessment under Sched. (E):

Beaumont v. Bowers, [1900] 2 Q. B. 204, disapproved; Hudson v. Gribble, Bell v. Gribble, [1903] 1 K. B. 517, 72 L. J. K. B. N. S. 242, 88 L. T. N. S. 186, 51 Week. Rep. 457, 4 Tax Cas. 522.

The amount deducted from the salary of a clerk to the guardians of a union, etc., as a contribution for superannuation allowance under the Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), was held to be deductible from his Sched. (E) assessment, as falling within the words "sums payable or chargeable by virtue of any Act of Parliament" in § 146, r. 1:

Beaumont v. Bowers, [1900] 2 Q. B. 204, 69 L. J. Q. B. N. S. 600, 48 Week. Rep. 557, 4 Tax Cas. 189. This case was disapproved in Hudson v. Gribble and Bell v. Gribble, supra.

second, all interest paid within the year by a taxable person on indebtedness;

And also all interest due or paid within the year by such person on existing indebtedness.—Act of August 28, 1894, Sec. 28.

A financial and investment company obtained from bankers in New York sums on loans for periods not exceeding six months in order to pay for its securities purchased by it. In stating its profits for the purpose of income tax, the company claimed to deduct the interest paid on these loans, but the commissioners, being of opinion that these sums were utilized as additional capital, disallowed the deduction: *Held,* that the sums borrowed could not be regarded as capital, and that the interest fell to be deducted in arriving at the assessable profits.

Alexandria Water Co. v. Musgrave (52 L. J. Q. B. N. S. 349, 11 L. R. Q. B. Div. 174), distinguished.

Anglo-Continental Guano Works v. Bell (70 L. T. N. S. 670), doubted.

Scottish North American Trust v. Inland Revenue [1910] S. C. 966, Ct. of Sess.

A company carrying on a financial and banking business at home and abroad borrowed money from its foreign bankers, by whom it was allowed a large overdraft, and paid interest on the amount so borrowed, and also from time to time on the amount of the overdraft: *Held,* that in assessing for income tax the profits and gains of its business, the company was entitled to deduct the amount of interest paid to the bankers on the loan and the periodical amount of the overdraft.

Farmer v. Scottish North American Trust, Lim. 81 L. J. P. C. N. S. 81 [1912] A. C. 118, 105 L. T. N. S. 833, 28 Times L. R. 142, 5 Tax Cas. 693, H. L. (Sc.).

Where a burial board make profits, they are entitled to deduct from the total receipts the expense of earning them, or what may be called the working expenses, but not the interest upon money borrowed.

Portobello Town Council v. Sulley (1890), 27 Scot. L. R. 863, 2 Tax Cas. 647.

An English company carrying on business at Alexandria, where their works and property were, paid debenture interest to their debenture holders residing in Egypt:—*Held,* not an allowable deduction in ascertaining the amount of the company's profits for assessment.

Alexandria Water Co. v. Musgrave (1883), L. R. 11 Q. B. Div. 174, 52 L. J. Q. B. N. S. 349, 49 L. T. N. S. 287, 32 Week. Rep. 146, 1 Tax Cas. 521.

Per Lord HALSBURY, L. C. [1892] A. C. p. 315: "With the decision in that case I am not disposed to disagree, though I am not quite certain I am able to adopt the reasoning . . . but upon the facts, I think I should have come to the same conclusion, since, to put it very plainly, in that case it was a claim to deduct the company's debts for borrowed capital and diminish the amount of the profits of the trading." Per Lord HERSCHELL (p. 325): "It is by no means clear that the case was not within the prohibition of the third rule." See also Lord WATSON (p. 320).

Gresham Life Assurance Society v. Styles [1892] A. C. 309; 62 L. J. Q. B. N. S. 41, 67 L. T. N. S. 479, 41 Week. Rep. 270, 3 Tax Cas. 185.

See also Clerical, Medical and General Life Assurance Society v. Carter (1889), L. R. 22 Q. B. Div. 444, 58 L. J. Q. B. N. S. 224, 2 Tax Cas. 437. *Per* Lord ESHER, L. R. 22 Q. B. Div. p. 449: "I think that the 52nd section ought to be so construed as to prevent the suggested hardship, and that interest of money ought not first to be taxed as a separate subject-matter of taxation and then brought again into account in arriving at the profits and gains."

The case of Mersey Loan and Discount Co. v. Wootton (1887), 4 Times L. R. 164, 2 Tax Cas. 316, where it was decided that a company paying compound interest at 5 per cent. to its depositors on the varying amounts standing to their credit at one or more week's notice of withdrawal, was not entitled to deduct such interest in ascertaining the amount of its profits for assessment, because it was "payable out of profits and gains," is now overruled.

Gresham Life Assurance Society v. Styles [1892] A. C. 309, supra.

A banking company, which had its head office in Australia, and carried on a banking business at a branch office in London, paid interest on its interminable stock to certain holders of such stock in the United Kingdom. In ascertaining the amount of the profits of the branch in the United Kingdom, assessable under Sched. (D.), the bank claimed a deduction in respect of the interest so paid:—*Held*, per CHANNELL, J., in the King's Bench Division, that the deduction was not allowable.

Queensland National Bank v. Thrift (1909), unreported.

A foreign company had a central office at Hamburg and a branch house in London, the latter being carried on as a separate business, with a separate capital. To enable the London house to buy goods more advantageously for cash, instead of on credit at a higher price, the London house obtained short loans from the central office and from bankers abroad, and paid interest thereon. It was admitted that the interest on the advances from the central office was not a deduction in ascertaining the profits of the London branch:—*Held,* that the interest on the short loans from the bankers was also not an admissible deduction.

Anglo-Continental Guano Works v. Bell (1894), 70 L. T. N. S. 670, 58 J. P. 383, 3 Tax Cas. 239.

This case was distinguished in Farmer v. Scottish North American Trust, Limited [1912] A. C. 118, 81 L. J. P. C. N. S. 81, 105 L. T. N. S. 833, 5 Tax Cas. 693, set out infra.

See also City of London Contract Corporation v. Styles (1887), 4 Times L. R. 51, 2 Tax Cas. 239, referred to ante.

A financial and investment company carrying on an investment business, was empowered by its memorandum of association to borrow and raise money by way of loan, overdraft, etc. The company purchased, in the course of its business, bonds, stocks, and other securities in New York. As the value of these purchases exceeded the amount of the company's available cash, the company pledged to their bankers in New York, certain of their securities lying there, and thereupon the bankers allowed the company to overdraw their banking account. The overdraft fluctuated from time to time as securities were bought and sold by the company, and the bankers charged the company periodic interest thereon at current rates from day to day. In 1906, the company opened a loan account with their bankers, in addition to the ordinary overdraft, on which the bankers granted a loan not exceeding $200,000, for a period of six months at 6 per cent. When this loan fell due, it was renewed for a further six months, after which the loan account was terminated and the balance transferred to current account. The bankers collected all the dividends and coupons upon the securities in their hands, paying the interest due to themselves out of the sums so collected, the difference or net amount being credited to the company. In the event of the dividends and

coupons collected not equalling the amount of the interest payable in any month, the interest was debited to the overdraft on the current account. The company, in ascertaining the amount of their profits for assessment, claimed to deduct the amount of interest paid to their bankers, but on appeal to the general commissioners the deduction was disallowed, on the ground that the interest was interest on capital:—*Held,* by the House of Lords, that the deduction in question was admissible, as the money borrowed could not be regarded as "capital" within the meaning of the Income Tax Acts; and the interest paid was expenditure by means of which the company procured the use of the thing by which they made a profit, and, like any similar outgoing, should be deducted from the receipts to ascertain the taxable profits and gains earned by the company (Anglo-Continental Guano Works v. Bell (1884), 70 L. T. N. S. 670, 3 Tax Cas. 239, distinguished). Per Lord ATKINSON [1912], A. C. p. 125: "The second proposition established in the last-mentioned case (Gresham Life Assurance Society v. Styles, [1892] A. C. 309) is that in these Acts the words 'profits and gains' are, where the context does not otherwise require, to be construed in their ordinary signification. I can see no reason for suggesting that this last-mentioned principle should not apply to the word 'capital' when used in these statutes, and that it too, where the context does not otherwise require, should be construed in its ordinary sense and meaning." (P. 127): "There is nothing to show that that word capital should bear a different meaning in the Income Tax Acts when applied to the proceedings of joint stock companies. The interest is, in truth, money paid for the use or hire of an instrument of their trade, as much as is the rent paid for their office or the hire paid for a typewriting machine."

Farmer v. Scottish North American Trust, Limited, [1912] A. C. 118, [1912] S. C. (H. L.) 26, 81 L. J. P. C. N. S. 81, 105 L. T. N. S. 833, 49 Scot. L. R. 114, 5 Tax. Cas. 693.

third, all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; *Provided*, that in estimating said income, all national, state, or local taxes assessed upon the property from which the income is derived shall be first deducted.—Act of Aug. 5, 1861, § 49.

All other national, state, and local taxes, lawfully assessed upon the

property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived.—Act of July 1, 1862, § 9.

All national, state, and municipal taxes, other than the national income tax, lawfully assessed within the year upon the property or sources of income of any person, as aforesaid, from which said annual gains, profits, or income is or should be derived.—Act of June 30, 1864, § 117.

All national, state, county, and municipal taxes paid within the year.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

All national, state, county, and municipal taxes paid by him within the year.—Act of July 14, 1870, § 9.

And all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year.—Act of August 28, 1894, § 28.

Under a former act ruled that assessments made by municipal corporations for the laying out or the grading of streets, or the construction of walks, sewers, etc., may be deducted from income where they are laid upon all taxpayers within the corporations, but if they are laid only upon the owners of the property supposed to be increased in value by the improvement, no deduction can be allowed.

Ruling, 1 Int. Rev. Rec. 150.

fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck,

Losses actually sustained during the year arising from fires, shipwreck, or incurred in trade.—Act of March 2, 1867, § 13.

All his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade.—Act of July 14, 1870, § 9.

Also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck.—Act of August 28, 1894, § 28.

A brewery company owned an inn, which was carried on by a manager as part of their business. In estimating the balance of profits for income tax purposes, they claimed to be entitled to deduct the amount of damages and costs recovered against them by a customer, who had been injured by the fall of a chimney while he was sleeping in the inn:—*Held,* that they were not entitled to do so. The loss was not connected with or arising out of the trade, and was not money wholly and exclusively laid out for the purposes of the trade. Per Lord Loreburn, L. C. [1906] A. C. p. 452: "I think only such losses can be deducted as are connected with, in the sense that they are really incidental to, the trade itself. They cannot be deducted if they

are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader. The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers for accidents in travelling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted. Per Lord DAVEY (p. 453); "The word 'loss' in r. 3 means what is usually known as a loss in trading or in speculation. It contemplates a case in which the result of the trading or adventure is a loss, wholly or partially, of the capital employed in it."

Strong & Co. Limited v. Woodifield, [1906] A. C. 448, 75 L. J. K. B. N. S. 864, 95 L. T. N. S. 241, 22 Times L. R. 754, 5 Tax Cas. 215.

Semble, by the Lord Chancellor, losses sustained by a railroad company in compensating passengers for accidents in traveling might be deducted.

Ibid.

A fire insurance company is not allowed to deduct a sum estimated to be the probable future loss on policies outstanding at the time of assessment upon which the premiums are fully paid. Such losses are deductible when they occur.

Imperial Fire Ins. Co. v. Wilson, 35 L. T. N. S. 271 [1876], Exch. D.

If a person is engaged in a partnership business either as a silent partner or otherwise, his gains and losses must be considered as incident to the business.

Ruling, 4 Int. Rev. Rec. 46.

The general rule is that losses incurred in the prosecution of one branch of business cannot be deducted from gain in another, since an absolute loss incurred in the prosecution of a single business is indisputably a loss of capital; but a broker may speculate in stocks, a dry-goods merchant in cotton, a hardware man in iron, etc., etc., and offset the gain and loss of the legitimate business and speculation.

Ruling, 1 Int. Rev. Rec. 154.

Losses in speculation cannot be deducted from salaries nor from gains in mechandise. Where losses are sustained in

one speculation and gains made in another speculation, such losses may be deducted from such gains; and losses in one branch of merchandise may be deducted from gains in any other branch of merchandise.

Ruling, 1 Int. Rev. Rec. 155.

A brewery company, which carried on the business of bankers and money lenders as an adjunct to their business as brewers, made loans to the customers of the brewery on the security of publichouses, and if the security did not realize the amount of the loan, the company wrote off the loss as a bad debt:—*Held,* that the company were entitled to deduct the amount of such losses or bad debts, that they must be taken to have carried on one business only, and that the money advanced to the customers was used in the business and not capital invested (Watney v. Musgrave, distinguished).

Reid's Brewery Co. v. Male, [1891] 2 Q. B. 1, 60 L. J. Q. B. N. S. 340, 64 L. T. N. S. 294, 39 Week. Rep. 459.

The appellants were a limited company, formed to purchase and trade with a steamship, and, in the event of her loss or sale, to acquire some other steamship "but so that the company shall not at any one time own more than one ship." The company purchased the M. and traded with her from October 14, 1901 to April 1, 1906, when she was lost at sea. With the insurance moneys the company purchased the V. and she commenced her voyages on October 17, 1906, and so continued over the period of assessment to income tax: *Held*, that the company was carrying on one business throughout, and that a new business was not started when the M. was lost and the V. was acquired.

Merchiston Steamship Co. v. Turner, [1910] 2 K. B. 923, 102 L. T. N. S. 363—Bray, J.

It was held that the loss on a farm assessed under Sched. (B.), and worked in connection with the business of a seed merchant assessed under Sched. (D.), could not be deducted from the profits of the seed business.

Brown v. Watt, 23 Scot. L. R. 403, 50 J. P. 583, 2 Tax Cas. 143 [1886].

A company, to extend its business, opened a manufactory and fitted machinery. That part of the business did not answer, and the company closed the manufactory, and removed a portion of the machinery elsewhere.

Subsequently the company re-opened the manufactory on a smaller scale. The company considered that a portion of the original cost of constructing the factory and fitting the machinery, was lost to them, and claimed a deduction in respect thereof:—*Held,* that the deduction was inadmissible, the loss being a loss of capital.

Smith v. Westinghouse Brake Co. [1888], 2 Tax Cas. 357.

A steamship company owned the whole of one ship, and fifty-nine sixty-fourths of another:—*Held,* by RIDLEY, J., following Atty.-Gen. v. Borrodaile, that the latter ship was an adventure carried on by the company jointly with other persons, and that therefore the company must be assessed by two assessments, one in respect of each ship.

Farrell v. Sunderland Steamship Co. [1903], 88 L. T. N. S. 741, 4 Tax Cas. 605.

An actual loss realized by the sale of stock will be allowed as an offset to gains derived from the sale of similar stocks, or interest received on such stocks, but unless the sale of stock has been made, there is no ascertained, but merely a speculative, loss which cannot be deducted from any income.

Ruling, 3 Int. Rev. Rec. 109.

When stocks are sold at less than their cost, the difference between their actual cost and the price at which they are sold should be allowed as a deduction in estimating the taxable income of the year in which the sale is made.

Ruling, 5 Int. Rev. Rec. 115.

If a taxpayer can show the stock of an insolvent manufacturing company to be utterly worthless, he should be allowed to deduct the purchase-money originally given by him therefor from the gains accruing in respect of the other manufacturing operations in which he may be engaged, or in respect of the dividends of other manufacturing companies, for the year when such insolvency appeared.

Ruling, 2 Int. Rev. Rec. 4.

Where stocks, etc., are bought as a permanent investment and sold again merely to change the investment, a loss sustained in the sale may be deducted from the dividends from such stock; but where the purchase is made for the purpose of selling again on speculation, the loss sustained by the sale cannot be deducted from dividends, but may be deducted from

gains derived from the purchase and sale of stock in the same year.

Ruling, 1 Int. Rev. Rec. 196.

No deduction from income can be allowed for a voluntary conveyance without valuable or adequate consideration.

Ruling, 3 Int. Rev. Rec. 172.

Losses of capital such as loss by robbery, losses as surety etc., etc., cannot be deducted from income.

Ruling, 5 Int. Rev. Rec. 123.

The amount paid for the good-will of a business is capital invested and not a loss to be deducted from income.

Ruling, 5 Int. Rev. Rec. 188.

No account is to be made in the estimation of income of a merely nominal appreciation or depreciation in the value of property. Therefore the mere depreciation in the value of a lease cannot be deducted from income.

Ruling, 2 Int. Rev. Rec. 92.

If a manufacturer has invariably estimated his stock on hand at the cost value each year since the act has been in force, he should continue so to do, and should not make return by one method after having adopted the other.

Ruling, 3 Int. Rev. Rec. 109.

When the income of a former year is lost, it cannot be deducted from the income of the year of tax unless used and lost in the year of tax. This rule of deduction is not extended to capital not used in business.

Ruling, 4 Int. Rev. Rec. 46.

Capital invested in any stockholding company is not recognized as capital used in business, and there is no deduction for the loss of such capital.

Ruling, 4 Int. Rev. Rec. 46.

Where repairs made on rented property by a tenant are allowed in lieu of rent, the amount actually expended for such repairs should be treated as rent paid and may be deducted from any income of the tenant.

Ruling, 2 Int. Rev. Rec. 61.

Penalties imposed for violation of the excise law are legitimate offsets to the profits of the business in connection with

which they were incurred, but they cannot be allowed as deductions from income actually realized from other pursuits.

Ruling, 4 Int. Rev. Rec. 46.

By section 23 of the Customs and Inland Revenue Act, 1890. "Where any person shall sustain a loss in any trade, manufacture, or concern, or profession, employment, or vocation— it shall be lawful for him * * * to apply to the commissioners * * * for an adjustment of his liability by reference to the loss and to the aggregate amount of his income * * *—: *Held,* that this does not apply to a particular loss in ascertaining the profits of a particular business which has occurred in the course of the business, but to a general loss resulting from the business— that is a loss as the total result of the business operations. The commissioners under section 23 ought to consider the aggregate income of the person; then whether he has sustained a loss in any trade, manufacture, etc.; and if so, what is a proper adjustment of his liability to pay income tax by reference to that loss.

Rex v. Income Tax Commissioners, 91 L. T. N. S. 94—D.

and not compensated for by insurance or otherwise;

And not compensated for by insurance or otherwise.—Act of Aug. 28, 1894.

The property which is used in business, and furnishing the profits, when destroyed by fire, may be restored at the expense of those profits to the condition when destroyed. If insured the difference between the insurance received and the amount expended in restoration will be allowed. Unless the property be restored, no deduction on account of the loss of such property can be made.

Ruling, 2 Int. Rev. Rec. 36.

fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

And debts ascertained to be worthless.—Act of March 2, 1867, § 13; Act of July 14, 1870, § 9; Act of August 28, 1894, § 28.

Under the Act of July 14, 1870, the amount of a promissory note taken in 1871 on the sale in that year of a patent right but not due until 1872, and paid then, is not taxable as income

Sed quære, if it had been due in 1871 and the defendant had allowed it to remain unpaid?

U. S. v. Schillinger, 14 Blatchf. 71, Fed. Cas. No. 16,228 (1876), U. S. Cir. Ct. S. Dist. N. Y. JOHNSON, J.

Semble, that the taxpayer should not be allowed to leave his debts uncollected for the purpose of evading the tax.

U. S. v. Frost, 9 Int. Rev. Rec. 41, Fed. Cas. No. 15,172 (1869), U. S. Dist. Ct. N. Dist. Ill. DRUMMOND, J.

sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business,
See Corporation Income Tax, infra, G.

A corporation purchased gasworks in a defective structural condition:—*Held,* not to be entitled to deduct a sum appropriated yearly out of the profits to a depreciation fund to be expended in future years in the restoration of the plant and apparatus.

Clayton v. Newcastle-under-Lyme Corporation [1888], 2 Tax Cas. 416.

Income tax commissioners, in estimating the deduction to be allowed from the profits of a shipowner's business under section 12 of the Customs and Inland Revenue Act, 1878, in respect of the diminished value of the ships by reason of wear and tear, must consider what is a just and reasonable allowance to make for the depreciation in their value during the particular years of assessment, and are not entitled to take into account allowances in respect of depreciation which have been made in previous years.

Hall & Co. v. Rickman, 75 L. J. K. B. N. S. 178, 1 K. B. 311, 94 L. T. N. S. 224, 54 Week. Rep. 380, 22 Times L. R. 131—WALTON, J. [1906].

A new company having purchased as a going concern the business of an old company was assessed for income tax on the average profits of the old company for the three years preceding the purchase. The amount of deductions for wear and tear to which the old company was entitled during these three years had not been given effect to in full, owing to the fact that they exceeded the amount of the taxable income of the old company during that time: *Held,* that the new company was entitled

to deduct from its taxable income the balance of the deductions allowable to the old company.

Scottish Shire Line v. Inland Revenue [1912] S. C. 1108—Ct. of Sess.

In ascertaining the profits from the business of coal and iron masters, it was held that a deduction of a percentage claimed for (1) sinking pits, and (2) depreciation of buildings and machinery, was not allowable.

Addie & Sons v. Solicitor of Inland Revenue [1875] 2 R. 431, 12 Scot. L. R. 274, 1 Tax Cas. 1.

The appellants, a firm of brewers, purchased the leases of public houses which they let to tenants, who convenanted to purchase from the brewers all the beer sold therein. In some cases the appellants paid premiums for such leases. In ascertaining their profits, they claimed to deduct for each year a portion of the amount paid as premiums, as representing a part of their capital exhausted during the year in earning profits:—*Held,* that the deduction was not allowable.

Watney v. Musgrave [1880] L. R. 5 Exch. Div. 241, 49 L. J. Exch. N. S. 493, 42 L. T. N. S. 690, 28 Week. Rep. 491, 1 Tax Cas. 272.

In ascertaining the profits of the business of licensed victuallers, who had purchased the lease, which had 20½ years to run, of their business premises, for £34,000, a deduction of £1,725, viz., 1-20½ part of £34,000, was claimed for depreciation in value of the lease for the year:—*Held,* that this deduction could not be made, and that the deduction must be limited to the existing annual value of the premises, whatever the premium originally paid may have been.

Gillatt and Watts v. Colquhoun [1884] 33 Week. Rep. 258, 2 Tax Cas. 76.

not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made,

See Corporation Income Tax, infra, G, and cases there cited.

Where land is acquired for commercial purposes of which one stratum only is of any value, and that stratum is in the process of exhaustion, such land is "capital" within the meaning of the First case of Schedule D of the Income Tax Act 1842 and no

deduction, can be allowed in respect of such exhaustion, which is a diminution of capital for which deduction is prohibited by section 159.

Alianza Co. v. Bell, 75 L. J. K. B. N. S. 44, [1906] A. C. 18, 93 L. T. N. S. 705, 54 Week. Rep. 413, 5 Tax Cas. 172, 22 Times L. R. 94—H. L. (E.)

but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made:

Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate;

No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.—Act of June 30, 1864, § 117; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13; Act of July 14, 1870, § 9.

Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.—Act of August 28, 1894, § 28.

Expenses incurred for usual and ordinary repairs on farms may be deducted from income, but the amount deducted must not exceed the average paid out for such purposes for the preceding five years. Amounts expended for permanent improvements or betterments, made to increase the value of any property or estate, cannot be deducted.

Ruling, 1 Int. Rev. Rec. 140.

Repairs must be distinguished from permanent improvements. The replacing of worn-out tools or machinery should be considered as repairs in so far as the new articles equal the estimated value of the old, and as permanent improvements in the amount by which the value of the new articles exceed that of the old.

Ruling, 2 Int. Rev. Rec. 61.

Amounts expended by the purchaser of a building in repairing injuries which occurred thereto prior to his purchase, are, so far as he is concerned, betterments made to increase the value of the property, and should not be allowed as deductions from income.

Ruling, 6 Int. Rev. Rec. 18.

Permanent improvements and betterments as used in Sec-

tion 117 are very nearly synonymous, and refer to that class of improvements which permanently increase the value of the property upon which they are made, while repairs are understood to be those improvements made or work done upon the property which serve merely to prevent its becoming useless or depreciating in value. Amounts expended in improvements or betterments are not deducible from income, but repairs are.

Ruling, 5 Int. Rev. Rec. 130.

seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided;

See subsection G, infra.

All gains, profits, or income * * derived from interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, express, telegraph, steamboat, ferry-boat, or railroad company, or corporation, or on any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies, savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry-boat, express, or railroad companies, as aforesaid, or derived from advertisements, or any articles manufactured, upon which specific, stamp, or *ad valorem* duties shall have been directly assessed or paid, shall also be deducted.—Act of July 1, 1862, § 9.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise."—Act of June 30, 1864, § 122.

And there shall also be deducted the income derived from dividends on shares in the capital stock of any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slackwater company, and the interest on any bonds or other evidences of indebtedness of any such corporation or company, which shall have been assessed and the tax paid, as hereinafter provided.—Act of June 30, 1864, § 117.

No deduction shall be made for dividends or interest received from any association, corporation, or company.—Joint Resolution of July 4, 1864.

In ascertaining the income of any person liable to an income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the Commissioner of Internal Revenue, or other officer authorized to receive the same, shall be included; and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person.—Act of March 3, 1865, § 1.

Except the amount of income received from institutions or corporations whose officers as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the officer authorized to receive the same.—Act of March 2, 1867, § 13.

[The return shall not include] the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made and of the interest or coupons paid by such corporation.—Act of July 14, 1870, § 11.

Provided also, that in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this act.—Act of August 28, 1894, § 28.

Under the Act of June 30, 1864, an insurance company holding shares in a bank was not liable to a tax upon a dividend declared by the bank upon which the bank has already paid the tax.

Merchants Ins. Co. v. McCartney, 12 Int. Rev. Rec. 122, Fed. Cas. No. 9,443 (1870), U. S. Cir. Ct. Dist. Mass. Lowell, J.

Although sections 120 and 122 of the Act of March 3d, 1865, clearly contemplate that the Government shall receive five per cent of the whole amount paid out by any of the companies enumerated on account of dividends or interest upon bonds, it has been contended by some companies that as they were merely authorized and not required to withhold the tax from

such dividends or interest, it was competent for them to pay the tax, and charge the same to their expense account, and make the payment to the stockholder or bondholder free of tax. The result of this construction is to give the Government five dollars for every one hundred dollars paid to the stockholder, instead of five dollars for every ninety-five dollars thus paid.

When the company adopts that construction, the deduction provided for in the 116th and 117th sections should not be allowed.

Ruling, 1 Int. Rev. Rec. 116.

Whenever a stockholder makes his income return under section 116, he should return as his income from dividends, not only the $95 from $100 paid to him by the company, but also the $5 paid for him to the Government.

For example:

A's dividend or share of the profits in a railroad company is $4,000. Of that sum the company withholds and pays into the Government five per cent., that is $200; the remaining $3,800 is paid to A. In addition to income from dividends, he has an income of $800 from other sources. From this he is entitled to deduct $600, leaving $200 as taxable income from other sources. To this add the $3,800 received directly from the company, and he has a taxable income of $4,000. Five per cent upon that sum is $200. From this deduct the $200 withheld by the company and nothing remains. The Government has received no tax whatever from the $200 taxable income from other sources.

Ruling, 2 Int. Rev. Rec. 100.

eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

"All persons, firms, copartnerships, companies, corporations, joint-stock, companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment

of interest, rent, salaries, wages, premiums, annuities, compensations, remuneration, emoluments, or other fixed or terminable annual gains, profits, and income of another person, exceeding three thousand dollars for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. * * * *Provided further*, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trusts or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to three thousand dollars, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government: and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed three thousand dollars, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons." Subsection C, infra.

In cases where the salary or other compensation paid to any person in the employment or service of the United States, shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid in such manner as the Commissioner of Internal Revenue, under the direction of the Secretary

of the Treasury, may prescribe.—Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

In cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of one thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

And provided further, that in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.—Act of August 28, 1894, § 28.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

In the case of a corporation, joint stock company or association, or insurance company, organized, authorized or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed five per centum of the gross value at the mine of the output for the year for which the computation is made; * * * (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from

all sources within and without the United States: Provided, that in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof or the District of Columbia. Infra. G.

That in computing net income under this section there shall be excluded the interest upon the obligations of a state or any political subdivision thereof,

Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided*, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.—Subsection G infra.

"Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of $60,000, and that the directors of the company intend to return and pay the taxes on the income so derived. The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers. As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United

States have no power under the Constitution to tax either the instrumentalities or the property of a State. A municipal corporation is the representative of the State and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. Collector v. Day, 11 Wall. 113, 124, 20 L. ed. 122, 125; United States v. Railroad Company, 17 Wall. 322, 332, 21 L. ed. 597, 601. In Collector v. Day, it was adjudged that Congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial officers of a State, for reasons similar to those on which it had been held in Dobbins v. Commissioners, 16 Pet. 435, 10 L. ed. 1022, that a State could not tax the salaries of officers of the United States. Mr. Justice NELSON, in delivering judgment, said: 'The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States.' This is quoted in Van Brocklin v. Tennessee, 117 U. S. 151, 178, 29 L. ed. 845, 854, 6 Sup. Ct. Rep. 670, and the opinion continues: 'Applying the same principles, this court, in United States v. Railroad Company, 17 Wall. 322, 21 L. ed. 597, held that a municipal corporation within a State could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the State, created by the State to exercise a limited portion of its powers of government, and therefore its revenue, like those of the State itself, were not taxable by the United States. The revenues thus adjudged to be exempt from Federal taxation were not themselves appropriated to any specific public use, nor derived from property held by the State or by the municipal corporation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income, belonging to it in its municipal character, must be so held. The reasons for

exempting all the property and income of a State, or of a municipal corporation, which is a political division of the State, from Federal taxation, equally require the exemption of all the property and income of the national government from State taxation.' In Mercantile Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826, this court said: 'Bonds issued by the State of New York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.' The question in Bonaparte v. Appeal Tax Court, 104 U. S. 592, 26 L. ed. 845, was whether the registered public debt of one State, exempt from taxation by that State or actually taxed there, was taxable by another State when owned by a citizen of the latter, and it was held that there was no provision of the Constitution of the United States which prohibited such taxation. The States had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each. The law under consideration provides 'that nothing herein contained shall apply to States, counties or municipalities.' It is contended that although the property or revenues of the States or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in Weston v. Charleston, 2 Pet. 449, 468, 7 L. ed. 481, 488, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence, depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely. * * * The tax on government stock is thought by this court to be a tax on the

contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution.' Applying this language to these municipal securities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Pollock v. Farmers' Loan & Trust Co. 157 U. S. 429, 583–586, 39 L. ed. 759, 820, 821, 15 Sup. Ct. Rep. 912, per FULLER, C. J.

See also the opinions of Governor Hughes, Governor Fort and Senator Root, quoted supra, pp. 32–40.

It has been ruled that income derived from interest upon the obligations of a city or county in a State is not taxable (T. D. 1892, Nov. 6, 1913); but that income upon the bonds of irrigation and reclamation districts of California is not exempt (T. D. 1910, Dec. 4, 1913).

and upon the obligations of the United States or its possessions;

Provided, That upon such portion of said income as shall be derived from interest upon treasury notes or other securities of the United States, there shall be levied, collected, and paid a tax of one and one half per centum. * * * Excepting that portion of said income derived from interest on treasury notes and other securities of the Government of the United States, which shall pay one and one half per centum.—Act of Aug. 5, 1861, § 49.

That upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or of five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collected, and paid a duty not exceeding one and one half of one per centum, anything in this act to the contrary notwithstanding.—Act of July 1, 1862, § 91.

Provided, that income derived from interest upon notes, bonds, and other securities of the United States, shall be included in estimating incomes under this section.—Act of June 30, 1864, § 116.

Provided, that incomes derived from interest upon notes, bonds, and other securities of the United States, * * * shall be included in estimating incomes under this section.—Act of March 3, 1865, § 1.

There shall be included all income derived from interest upon notes, bonds, or other securities of the United States.—Act of March 2, 1867, § 13.

There shall be included * * * interest upon notes, bonds, or other securities of the United States.—Act of July 14, 1870, § 7.

Except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation.—Act of August 28, 1894, § 28.

"District of Columbia 3.65 bonds" are not bonds of the United States or exempt from taxation under § 5214, Rev. Stat. (U. S. Comp. Stat. 1901, p. 3,500).

Attorney General Devens, 16 Ops. Atty. Gen. 173 (1878).

"It would seem to be clear that the fact that they are obligations of the United States does not dispose of the question whether they are to be included within the amount exempted under this statute. It would not be contended, for instance, that the 'gold and silver certificates,' as they are familiarly called, of the United States, which are certificates of indebtedness, to the payment of which the United States is solemnly pledged, would be exempt under this statute."

Ibid.

Manhattan Co. v. Blake, 148 U. S. 412, 37 L. ed. 504, 13 Sup. Ct. Rep. 640 (1893), BLATCHFORD, J.

A statute providing for taxes on incomes is constitutional under the Constitution of New Hampshire, except so far as it authorizes a tax on securities given to secure a loan to the United States.

Opinion of the Justices, 53 N. H. 634 (1865).

No deduction should be allowed for the proportionate interest of shareholders in the stock or bonds of the United States held by a corporation.

Ruling, 4 Int. Rev. Rec. 13.

The fact that United States bonds are above par does not render the owner liable to State taxation by the State on the excess.

People ex rel. Leonard v. Commissioners, 90 N. Y. 63 (1882).

also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the Supreme and inferior Courts of the United States now in office,

That on, and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid, on all salaries of officers, or payments, to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars.—Acts of July 1, 1862, § 86.

That there shall be levied, collected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars.—Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

There shall be levied, collected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of one thousand dollars per annum, a tax of five per centum on the excess above the said one thousand dollars.—Act of March 2, 1867, § 13.

That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars.—Act of August 28, 1894, § 33.

And all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above six hundred dollars, * * * shall also be deducted.—Act of July 1, 1862, § 91.

Also [is to be deducted] the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives and delegates in Congress, above the rate of six hundred dollars per annum.—Act of June 30, 1864, § 117.

Also [is to be deducted] the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives and delegates in Congress, above the rate of six hundred dollars per anum.—Act of March 3, 1865, § 1.

Except that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted.—Act of March 2, 1867, § 13.

Including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative or delegate in Congress; except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been withheld.—Act of July 14, 1870, § 7.

Military or naval pensions allowed to any person under the laws of the United States * * * shall be exempt.—Act of July 14, 1870, § 8.

[The return shall not include] that portion of the salary, or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative or delegate in Congress from which the tax has been deducted.—Act of July 4, 1870, § 11.

Except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States,

including senators, representatives, and delegates in Congress, from which the tax has been deducted.

And except that portion of any salary upon which the employer is required by law to withhold, and does withhold, the tax, and pays the same to the officer authorized to receive it.—Act of August 28, 1894, § 28.

A law taxing the salaries of a president of the United States, or judges of the United States courts, who were in office at the time of its passage, would be unconstitutional.

Attorney General Hoar, 13 Ops. Atty. Gen. 161 (1869).

A law taxing the salaries of the civil officers of the United States, but not specifically naming either the president or the judges, is not to be *construed* as imposing a tax upon the salaries of such officers whose term of office began after the imposition of the tax.

Ibid.

"It would not be competent for Congress during his [the president's] term of office, by any repeal or diminution of the tax, to increase the amount paid to him. So that if the law imposing an income tax were repealed, the president alone, of the citizens of the country, would continue liable for its payment during the term for which it had been originally imposed, if his official term continued so long."

Ibid.

A tax upon the salary of a judge imposed subsequently to his appointment is not a diminution of his salary so as to conflict with a constitutional prohibition against diminishing salaries of judges during their terms of office.

Commissioners of Northumberland County v. Chapman, 2 Rawle (Pa.) 73 (1829).

Ruling, 4 Int. Rev. Rec. 132.

"M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: * * * *And Provided further,* That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the government of the District of Columbia, Porto Rico and the Philippine Islands, or the political subdivisions thereof."

and the compensation of all officers and employees of a State or any political subdivision thereof

Consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which

may be derived from their official emoluments, or from property in foreign countries: *Provided*, that the governments which such consuls may represent shall extend similar exemption to consuls of the United States. —Act of June 30, 1864, § 178; Act of July 14, 1870, § 14.

Provided that salaries due to state, county or municipal officers shall be exempt from the income tax herein levied.—Act of August 28, 1894, § 33.

The salary of a state officer is not taxable by the United States. *So held,* at common law, of a probate judge in Massachusetts.

The Collector v. Day, 11 Wall. 113, 20 L. ed. 122 (1870), U. S. Supreme, NELSON, J. affirming Day v. Buffington, 3 Cliff. 376, Fed. Cas. No. 3,675 (1869), U. S. Ct. Dist. Mass. CLIFFORD, J.

So held, also, of the salary of a judge of a court of a State, whose salary was paid by a city and fixed by a county board.

Freedman v. Sigel, 5 Chicago Leg. News, 196, Fed. Cas. No. 5,080 (1872), U. S. Cir. Ct. S. Dist. N. Y. SHIPMAN, J.

So held, also of the salary of a State's attorney.

U. S. v. Ritchie, 4 Chicago Leg. News, 139, Fed. Cas. No. 16,168 (1872), U. S. Dist. Md. GILES, J.

except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000,

If such annual income exceeds the sum of eight hundred dollars, a tax of three per centum on the amount of excess of such income above eight hundred dollars.—Act of Aug. 5, 1861, § 49.

Upon the income, rents, or dividends accruing upon any property, securities, or stocks owned in the United States by any citizen of the United States residing abroad, there shall be levied, collected, and paid a tax of five per centum.—Act of Aug. 5, 1861, § 49.

If such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars.—Act of July 1, 1862, § 90.

If such annual gains, profits, or income, exceed the sum of six hundred dollars, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars; and a duty of seven and one half of one per centum per annum on the excess over five thousand dollars and not exceeding ten thousand dollars; and a duty of ten per centum on the excess over ten thousand dollars.—Act of June 30, 1864, § 116.

A special income duty * * * at the rate of five per centum on all sums exceeding six hundred dollars.—Joint Resolution of July 4, 1864.

A duty of five per centum on the excess over six hundred and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars.—Act of March 3, 1865, § 1.

A tax of five per centum on the amount so derived over one thousand dollars.—Act of March 2, 1867, § 13.

A tax of two and one half per centum upon the gains, profits, and income.—Act of July 14, 1867, § 6.

The tax herein provided shall be assessed upon the annual income of any person shall be exempt from said income tax, in the manner hereinafter provided.—Act of July 14, 1870, § 8.

A tax of two per centum on the amount so denied over and above four thousand dollars.—Act of August 28, 1894, § 27.

There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company, association, or insurance company.—Corporation Tax Act of August 5, 1909.

"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in his papers (the Continentalist), "the genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands; whatever liberty we may boast of in theory it cannot exist in fact while (arbitrary) assessments continue." I Hamilton's Works, ed. 1885, 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential char-

acter as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double rate of Protestants and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the government and more self-respect for himself feeling that though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved they will ultimately triumph over all reverses of fortune."

Pollock v. Farmers' Loan and Trust Co. 157 U. S. 429, 596, 39 L. ed. 759, 824, 15 Sup. Ct. Rep. 912, Per FIELD, J.

An exemption of $500 is not a constitutional provision that "taxation shall be equal and uniform throughout the state."

City of New Orleans v. Fourchy, 30 La. Ann. 910 (1878).

"One of the questions most elaborately discussed in this case is *dehors* the record, to wit: that the tax on defendant's income is unconstitutional, for the reason that the city has exempted $1,000 of income in violation of article 118 of the Constitution [quoted ante]. We do not find in defendant's answer any allegation, nor in the record any proof of the *fact* that such exemption was *in reality* made. True, there was a law of the state authorizing and directing such exemption, but *non constat* that the city did so, especially if the doing so would have been unconstitutional, as argued by defendant."

Ibid. per SPENCER, J.

An exemption of five thousand dollars in a tax on corporations was held to be constitutional.

Flint v. Stone Tracy Co. 220 U. S. 107, 173, 55 L. ed. 389, 422, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

"It is again objected that incomes under $5,000 are exempted from the tax. It is only necessary, in this connection, to refer to Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747, supra, in which a tax upon inheritances in excess of $10,000 was sustained.

In Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594, a graded inheritance tax was sustained.

Ibid.

plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: Provided, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together.

Provided, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family, composed of parents and minor children, or husband and wife, except in cases where such separate incomes shall be derived from the separate and individual estates, gains, or labor of the wife or child: * * *—Act of June 30, 1864, § 116.

Provided further, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family, composed of parents and minor children, or husband and wife.—Act of March 3, 1865, § 1.

And *Provided, further*, That only one deduction of one thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents and one or more minor children, or husband and wife; that guardians shall be allowed to make such deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests only one deduction shall be made in their favor.—Act of March 2, 1867, § 13.

Only one deduction of two thousand dollars shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or of husband and wife; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits.—Act of July 14, 1870, § 8.

For the purpose of allowing said deduction from the income of any religious or social community holding all their property and the income therefrom jointly and in common, each five of the persons composing such society, and any remaining fractional number of such persons, less then five over such groups of five, shall be held to constitute a family, and a deduction of two thousand dollars shall be allowed for each of said families.—Act of July 14, 1870, § 8.

[The return shall not include] the wages of minor children not received. —Act of July 14, 1870, § 11.

Provided further, that only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family,

composed of one or both parents, and one or more minor children, or husband and wife.—Act of August 28, 1894, § 28.

Where it is difficult to apportion or agree upon the apportionment of the amounts exempted among the members of any family, the case may be referred to the Internal Revenue Office.

Ruling, 1 Int. Rev. Rec. 149.

When the wife has legal control of her own income, she should make separate returns of the same, and the exemption of $600 should be shared in proportion to the separate amount of income, but the rate of ten per cent should be assessed only on the excess of each income over $5,000.

Ruling 2 Int. Rev. Rec. 61.

The deduction shall be rated by proportion according to the respective incomes of the members of the family. Thus, A., the husband, has an income of $9,000, B., the wife, an income of $1,000, A. is entitled to deduct from his income nine-tenths of $600, and B. from hers one-tenth of $600. A.'s tax would be five per cent of $4,460 and ten per cent of $4,000, while B.'s tax would be five per cent on $940.

Ruling, 1 Int. Rev. Rec. 188.

The word "family" is construed to include not only parents and minor children living under the same roof, but also husband and wife, though living separately, unless separated by divorce or other operation of law such as to break up the family relation; and also minor children, although living separately from parents and supported by property in their own right, unless the parent or parents are legally absolved from all relations toward said children, or legally restrained from all personal control over them.

Ruling, 1 Int. Rev. Rec. 171.

In the definition of the family, no distinction is made between natural parents and parents at law, nor between a natural and step-child; although only one deduction can be allowed if the parties are generally possessed with incomes free from the control of another. The rate of tax will be determined by the amount of each separate income. If neither party has an income in his own right in excess of $5,000, the tax will be assessed at the rate of five per cent.

Ruling, 1 Int. Rev. Rec. 156.

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first:

The tax herein provided shall be assessed upon the annual income of the persons hereinafter [before] named for the year next preceding the time for assessing said tax, to wit, the year next preceding the first day of January, eighteen hundred and sixty-two.—Act of August 5, 1861, § 49.

That the tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-two.—Act of August 5, 1861, § 51.

And the duty herein provided for shall be assessed and collected upon the income for the year ending the thirty-first day of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter.—Act of July 1, 1862, § 91.

Provided, that the return [required from certain corporations] for the first of January, eighteen hundred and sixty-three, shall be made within thirty days after the passage of this act.—Act of March 3, 1863, § 14.

And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, or income for the year ending the thirty-first day of December next, preceding the time for levying, collecting. and paying said duty.—Act of June 30, 1864, § 116; Act of March 3, 1865, § 1.

The duties or incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June in each year.—Act of June 30, 1864, § 119.

And the tax herein provided for shall be assessed, collected and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.—Act of March 2, 1867, § 13.

The tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying and collecting said tax.—Act of July 14, 1870, § 10.

Received in the preceding calendar year. * * *

And the tax herein provided for shall be assessed by the Commissioner of Internal Revenue and collected and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.—Act of August 28, 1894, § 27.

When a decedent dies within the year, the tax must be paid upon so much of his income as accrued within the year and prior to his decease.

Mandell v. Pierce, 3 Cliff. 134, Fed. Cas. No. 1,008 (1868), U. S. C. Ct. Dist. Mass., Clifford, J.

In the case of a decedent, the same deductions are to be made

from the income accruing before his death as would be made if he had lived but had ceased to receive any further income.

Ibid.

A person living on the first Monday in May in any year is liable by himself or his executors or administrators to be taxed for his income the preceding year.

Ruling, 2 Int. Rev. Rec. 54.

A person having made all returns of income for which he was liable while living, will, on dying, leave his estate free from liability for income tax.

Ruling, 2 Int. Rev. Rec. 54.

If a person prior to the first Monday in May in any year make a return of income for the preceding year and then dies before the first Monday in May of the year in which he makes the return, neither he nor his representatives are liable for tax.

Ruling, 2 Int. Rev. Rec. 54.

All income of an estate after the owner dies, is income to the persons entitled to receive the same, and should be taxed to them or their legal representatives.

Ruling, 2 Int. Rev. Rec. 54.

Neither deceased persons nor their executors or administrators are to be taxed for income or gains made on or after January in one year and prior to the first Monday in May of the succeeding year, the person dying at any time before those two dates including the first.

Ruling, 2 Int. Rev. Rec. 54.

Only property passing from the testator or the testatrix can be considered liable to legacy taxes, but income accruing to the estate subsequently to the testator's death is taxable as income of the persons benefited thereby.

Ruling, 1 Int. Rev. Rec. 172.

Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for.

"The joint resolution of July 4th, 1864, imposed a tax upon

all income of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it." MILLER, J., Stockdale v. Insurance Cos. 20 Wall. 323, at p. 331, 22 L. ed. 348, 351 (1873), U. S. Supreme.

The act of July 14, 1870, imposed a tax upon all earnings for the year 1870, and was not thereby unconstitutional as being retroactive.

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873), U. S. Supreme, MILLER, J., overruling Home Mutual Ins. Co. v. Stockdale, 16 Int. Rev. Rec. 30, Fed. Cas. No. 6,662 (1872), U. S. Cir. Ct. Dist. La. DURELL, J.

Schuylkill Nav. Co. v. Elliott, 21 Int. Rev. Rec. 342, Fed. Cas. No. 12,497 (1875), U. S. Cir. Ct. W. Dist. Pa., McKENNAN, J.

"It is clearly * * * perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable."

READ, J., in Drexel & Co. v. Commonwealth, 46 Pa. 31, at p. 40 (1863).

For the general purposes of assessment the tax year in Alabama begins January 1st, and ends December 31st. Property owned on the first of January is returned for assessment that year. The tax on income, however, is given in, assessed, and paid the year after it accrues. Before that it cannot be known. It is not, therefore, double taxation to tax income of one year invested the succeeding year; once as income, and a second time as investment.

Board of Revenue v. Montgomery Gas Light Co. 64 Ala. 269 (1879).

Surplus earnings, made and laid aside before the passage of the first income tax law and profits on the sales of real estate bought before that time were not taxable thereunder.

Merchants' Ins. Co. v. McCartney, 12 Int. Rev. Rec. 122, Fed. Cas. No. 9,443 (1870), U. S. Cir. Ct. Dist. Mass. LOWELL, J.

The Act of July 14, 1870, declared that "there shall be levied

and collected for and during the year 1871, a tax of 2½ per cent on the amount of all interest paid by corporations and on the amount of dividends of earnings hereafter declared" by them. *Held,* to include interest paid and dividends declared during the last five months of 1870.

To interpret the act the Court had recourse to the journals of Congress.

Blake v. National Banks, 23 Wall. 307, 23 L. ed. 119 (1874), U. S. Supreme, HUNT, J.

Missouri River etc. R. R. v. U. S. 19 Fed. 66 (1884), U. S. Cir. Ct., W. Dist. Mo., MCCRARY, J., acc.

Interest and dividends accruing and earned in the last year of the tax, but payable the year following, *held* taxable.

Barnes v. The Railroads, 17 Wall. 294, 21 L. ed. 544 (1872), U. S. Supreme, CLIFFORD, J. (WAITE, C. J., STRONG, DAVIS, and FIELD, JJ., dissenting.)

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873), U. S. Supreme, MILLER, J.

Railroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068 (1879), WAITE, C. J. contra.

[The court distinguishes this case from Barnes v. Railroads on the ground that it appeared there expressly that the dividends (nothing being said of the interest in that case) were earned in the last year of the tax, while in the principal case there was no finding as to when the interest was earned, the only finding being that the interest was paid after the tax lapsed.]

Ibid.

U. S. v. Indianapolis, etc. R. R. 113 U. S. 711, 28 L. ed. 1140, 5 Sup. Ct. Rep. 724 (1884), HARLAN, J., contra.

[In this case it appeared expressly that the interest was paid out of earnings made in the last year of the tax, and thus the case falls within the distinction taken as to Barnes v. Railroads in Railroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068, which is relied on as a controlling authority. The Court say, at p. 713, "We do not perceive that the liability of the corporation for tax on this interest, as such, is affected by the circumstance that the interest was paid out of the earnings of the previous year." The distinction should probably be regarded as overruled, though the case taking it is followed.]

Ibid.

On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter,

In case of an income tax on or before the first day of March in each year.—U. S. Rev. Stat. § 3173 (U. S. Comp. Stat. 1901, p. 2065) as amended by this act.

In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days.—§ 3176 of Rev. Stat. as amended by this act, infra.

On or before the day designated by law.—Act of July 14, 1870, § 11.

On or before the day provided by law.—Act of August 28, 1894, § 29.

a true and accurate return,

To make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides of the gross amount of his income, gains, and profits as aforesaid.—Act of July 14, 1870, § 11.

It shall be the duty of any person, partnership, firm, association, or corporation made liable to any duty, special tax, or other tax imposed by law. when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return verified by oath or affirmation.—U. S. Rev. Stat. § 3173, as amended by this act, infra.

The act of August 5, 1861, contained no provision for a return by the taxpayer before the assessment of the tax, though by § 51 it was the duty of the several collectors, in case of failure to collect the tax, to "Examine under oath the person assessed under this act or any other person."

To make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, * * * according to the requirements hereinbefore stated.—Act of July 1, 1862, § 93.

To make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which he resides, of the amount of his or her income, * * * according to the requirements hereinbefore mentioned, stating the sources from which said income is derived, whether from any kind of property, or the purchase and sale of property, rents, interest, dividends, salaries, or from any profession, employment, or vocation, or otherwise.—Act of June 30, 1864, § 118.

To make and render a list or return, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

To make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to

the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid.—Act of August 28, 1894, § 29.

The Act of June 30, 1864, as amended by the Act of July 13, 1866, required returns to state whether they were made according to their values in legal tender or according to their values in coined money. *Held,* that the plaintiff having made its return in terms of coin (then at a premium) could not pay the tax in legal tender (then at a discount) of the same face value.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95 (1868), U. S. Supreme, SWAYNE, J.

under oath or affirmation,

And the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

The assistant assessor shall require every such return to be verified by the oath of the party rendering it.—Act of July 14, 1870, § 11.

And the collector or deputy collector, shall require every list or return to be verified by the oath or affirmation of the party rendering it.—Act of August 28, 1894, § 29.

Quære, whether the oath presented with the first return under the Act of July 1, 1862, was required by that act so that perjury could be assigned upon it?

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. Cir. Ct., S. Dist. N. Y., HALL, J.

shall be made by each person of lawful age,

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

For general provisions as to the making of returns of income, see §§ 3173, 3176, of Rev. Stat. (U. S. Comp. Stat. 1901, pp. 2065, 2068) as amended by this act, post, App. p. 433.

That it shall be the duty of all persons of lawful age.—Act of July 1, 1862, § 93; Act of June 30, 1864, § 118; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

That it shall be the duty of all persons.—Act of July 14, 1870, § 11.

That it shall be the duty of all persons of lawful age.—Act of August 28, 1894, § 29.

A minor, if he have no guardian, should make return himself. If he refuses, an independent assessment should be made as in other cases, without penalty.

Ruling, 7 Int. Rev. Rec. 59.

except as hereinafter provided,

That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph;—infra.

Provided, further, that persons liable for the normal Income Tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person.—infra.

subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year,

Provided further, that in either case above mentioned no return of income not exceeding $3,000 Arabic shall be required, infra.

Whose gross income during the preceding year exceeded two thousand dollars.—Act of July 14, 1870, § 11.

Having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed. * * *

But persons having less than three thousand five hundred dollars income are not required to make such report.—Act of August 28, 1894, § 29.

Persons whose income did not exceed $2,000 did not need to make returns, nor even to make affidavit that their income did not exceed that sum.

Ruling, 13 Int. Rev. Rec. 97.

to the collector of internal revenue for the district in which such person resides or has his principal place of business,

To the proper officer of internal revenue.—Act of July 1, 1863, § 93.

To the assistant assessor of the district in which he resides.—Act of June 30, 1864, § 118; Act of July 14, 1870, § 11.

To the assistant assessor of the district in which they reside.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

To the collector or a deputy collector of the district in which they reside.—Act of August 28, 1894, § 29.

As all income tax is required to be assessed and paid in the district in which the party resides, the legal residence of such party often becomes an essential subject of inquiry. It seems that where a party exercises his right of franchise, or where he is entitled so to exercise it, it is the best criterion of his residence. Where, however, a party has no vote, the tax is properly assessable where a personal property tax is paid.

Editorial in 1 Int. Rev. Rec. 153.

In case of removal out of a district after the first of May, the correct practice would seem to be to forward the return for collection to the district to which the party has removed.

Ibid.

or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States,

See supra.

in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe,

In such form and manner as may be prescribed by the Commissioner of Internal Revenue.—Act of June 30, 1864, § 118; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

In such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.—Act of August 28, 1894, § 29.

setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized;

guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals:

And all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of * * * the income of such

minors or persons as may be held in trust, as aforesaid.—Act of July 1, 1862, § 93.

And all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or in other fiduciary capacity, to make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor in the district in which he resides, of the amount of * * * the income of minors or persons as may be held in trust as aforesaid.—Act of June 30, 1864, § 118.

And all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardian or trustee resides, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee.—Act of March 3, 1865, § 1.

And all guardians and trustees, executors and administrators, or any person acting in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such person acting in a fiduciary capacity resides, of the amount of income, gains, and profits of any minor or person for whom they act.—Act of March 2, 1867, § 13.

And every guardian and trustee, executor and administrator, and any person acting in any other fiduciary capacity, or as resident agent for, or copartner of any non-resident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts.—Act of July 14, 1870, § 11.

And all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains and profits of any minor or persons for whom they act.—Act of August 28, 1894, § 29.

When a decedent dies, his legal representatives must make the return of income accruing before his death and within the year.

Mandell v. Pierce, 3 Cliff. 134, Fed. Cas. No. 9,008 (1868), U. S. Cir. Ct., Dist. Mass., Clifford, J.

A guardian residing abroad should return the income of his ward in the district where the ward resides, but a guardian not residing abroad should return the income of his ward in the district where such guardian resides.

Ruling, 3 Int. Rev. Rec. 172.

If a minor is under guardianship, the guardian must return the income. If there is no guardian the father is responsible for such return, and if he has the legal control of such income, he must return it with his own.

Ruling, 2 Int. Rev. Rec. 68.

A minor, if he have no guardian, should make return himself. If he refuses, an independent assessment should be made as in other cases, without penalty.

Ruling, 7 Int. Rev. Rec. 59.

If the partners or agents of aliens residing abroad can take the oath prescribed, that they have made the proper returns and paid tax in the district where they reside, the collector will not require any further return.

Ruling, 7 Int. Rev. Rec. 10.

Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen:

Provided, that any party in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of

this act, or that he or she has been assessed elsewhere and the same year for [and has paid—Act of June 30, 1864] an income duty, under authority of the United States.—Act of July 1, 1862, § 93; Act of June 30, 1864, § 118.

Provided, that any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of six hundred [one thousand—Act of March 2, 1867] dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty [tax—Act of March 2, 1867] elsewhere in the same year, under authority of the United States, upon his or her gains and profits, as prescribed by law.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

Any person, in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or upon those of his ward, beneficiary, or principal, as required by law.—Act of July 14, 1870, § 13.

Provided, that any person or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary, was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits, for which he, she, or it is liable as such fiduciary, as prescribed by law.—Act of August 28, 1894, § 29.

And shall thereupon be exempt from an income duty.—Act of July 1, 1862, § 93.

And shall thereupon be exempt from an income duty in said district.—Act of June 30, 1864, § 118.

And if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty [tax—Act of March 2, 1867] in said district.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

And if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in the said district.—Act of July 14, 1870, § 13.

And if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt

from income tax in the said district for that year.—Act of August 28, 1894, § 29.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint stock companies, or from the net earnings of corporations and joint stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax thereon imposed by this section, and shall pay to the officer of the United States government authorized to receive the same; and they are each hereby made personally liable for such tax.—infra.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor.—Act of June 30, 1864, § 120.

Provided further, that in either case above mentioned no return of income not exceeding $3,000 shall be required: Provided further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity,

Not including partnerships.—Act of August 28, 1894, § 32.

and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district

collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed; Provided further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided.

Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person.

Nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided further*, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete:—infra.

In computing net income for the purpose of the income tax there shall be allowed as deductions: * * * seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association or insurance company which is taxable upon its net income as hereinafter provided.—B supra. Every person liable for the additional tax shall, for the purpose of its assessment and collection, make a return of his total net income from all sources, corproate and otherwise.—A subd. 2, supra.

In computing net income for the purpose of the annual tax there shall be allowed as deduction: * * * eigth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax, upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.—B supra.

Every person subject to this additional tax shall, for the purpose of

its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise.—A supra.

The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it.

A true and accurate return, under oath or affirmation shall be made,—supra.

If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly.

And the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated.—Act of July 1, 1862, § 93; Act of June 30, 1864, § 118.

And may increase the amount of any list or return, if he has reason to believe that the same is understated.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

And may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated.—Act of July 14, 1870, § 11.

And may increase the amount of any list or return, if he has reason to believe that the same is understated.—Act of August 28, 1894, § 29.

Or, if the list or return of any party shall have been increased by the assistant assessor in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income or the amount held in trust, as aforesaid, liable to be assessed as aforesaid.—Act of July 1, 1862, § 93.

Or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, such party may be permitted to declare, under oath or affirmation, the amount of annual income, or the amount held in trust, as aforesaid, liable to be assessed.—Act of June 30, 1864, § 118.

Or, if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts and be permitted to prove and declare, under oath or affirmation, the amount of income liable to be assessed.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

When the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed.—Act of July 14, 1870, § 12.

And the same so declared shall be received as the sums upon which duties are to be assessed and collected.—Act of July 1, 1862, § 93.

And the same, so declared, shall be received by such assistant assessor as true and as the sum upon which duties are to be assessed and col-

lected, except that the deductions claimed in such cases shall not be made or allowed until approved by the assistant assessor.—Act of June 30, 1864, § 118.

But such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

But such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such cases shall be allowed until approved by the assistant assessor.—Act of July 14, 1870, § 12.

Or if the list or return of any person or corporation, company, or association shall have been increased by the collector, or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed. But such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector.—Act of August 28, 1894, § 29.

A preliminary injunction will not be granted to restrain the collector from increasing the assessment under the Act of July 1, 1862, when the oath required by § 93 of that act had not been made and the plaintiff did not excuse his neglect by showing fraud, accident, or mistake.

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. Cir. Ct., S. Dist. N. Y., Hall, J.

If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

But any person feeling aggrieved by the decision of the assistant assessor in such cases, may appeal to the assessor of the district, and his decision thereon shall be final; and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue.—Act of June 30, 1864, § 118.

Any person feeling aggrieved by the decision of the district assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue.—Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the Commissioner of Internal Revenue.—Act of July 14, 1870, § 12.

Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final.

If dissatisfied with the decision of the collector such person or corporation, company, or association may submit the case with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.—Act of Aug. 28, 1894, § 29.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: *Provided*, that the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit.—Act of August 28, 1894, § 29.

A State statute provided that the board of levee inspectors should hear and decide all questions as to the assessment of a tax and the additions or deductions from the same "whose decisions thereupon be final." *Held*, that this did not deprive the courts of jurisdiction to review a decision when its propriety was questioned in a suit at law.

McGhee v. Mathis, 21 Ark. 40, 55 (1860).

Congress has the power to provide that "the dutiable value" of imports shall be determined by a board of general appraisers or "legislative referees," and to provide that their decision thereupon shall be "final and conclusive as to the dutiable value of such merchandise against all parties interested therein," and in such case the courts will not review their decision in the absence of fraud when they acted within their jurisdiction.

Passavant v. U. S. 148 U. S. 214, 219, 37 L. ed. 426, 428, 12 Sup. Ct. Rep. 572 (1892), JACKSON, J.

Earnshaw v. U. S. 146 U. S. 60, 36 L. ed. 887, 13 Sup. Ct. Rep. 14 (1892), Brown, J.

Hilton v. Merritt, 110 U. S. 97, 28 L. ed. 83, 3 Sup. Ct. Rep. 548 (1884), Woods, J.

"'Final' is defined in Burrill's Law Dictionary (Part 1, page 627) to be that which terminates or ends a matter or proceeding, not absolutely, however, as the final judgment of an inferior court admits of an appeal."

Rondeau v. Beaumette, 4 Minn. 224, 228, Gil. 163 (1860).

Where a statute declares that the decision of an inferior tribunal shall be "final and conclusive," an appeal will lie. (See, however, Clarke v. Patterson, 6 Binn. (Pa.) 128.) But the proceeding may be attacked collaterally for want of jurisdiction (Ackerman v. Taylor, 9 N. J. L. (4 Halst.) 65), and for fraud, or, in some cases, for mistake or irregularity.

Matter of Application of Mayor, etc. of New York, 49 N. Y. 150 (1872).

Congress has the power to provide that an action will lie against a collector to recover taxes collected by him under an erroneous assessment not absolutely void, which he has paid into the treasury.

Cary v. Curtis, 3 How. 236, 242, 245, 11 L. ed. 576, 581 (1845).

Where the statute (U. S. Rev. Stat. § 2931) provided that the decision of the collector and appraiser should be "final and conclusive." *Held,* this "meant a valid liquidation—not a void liquidation. If merely erroneous, the liquidation will be valid and binding here; but, if void, that fact may be shown as a defense."

U. S. v. Thurber, 28 Fed. 56 (1886), U. S. Dist. Ct., S. Dist. N. Y., Brown, J.

The imposition of an import duty on domestic goods would be void.

Ibid. p. 57.

An appraisal without an examination would be void, "because an examination is a condition of the lawful exercise of his power."

Ibid.

An advancement of the valuation of the collector and a

liquidation of duties by him without any valuation by the appraiser would be void "although the collector had a general jurisdiction of the subject matter. It would be void because such an appraisement by the collector without any act of the appraiser would be illegal."

Ibid.

An appeal to the Commissioner of Internal Revenue was *held* to be a waiver of defects in the notice of assessment.

Bailey v. Railroad Co. 22 Wall. 604, 22 L. ed. 840 (1874), U. S. Supreme, CLIFFORD, J.

A defendant claiming a credit which was not presented to the accounting officers of the treasury and passed upon by them under Rev. Stat. §§ 951, 3220 (U. S. Comp. Stat. pp. 695, 2086) cannot set it up in an action by the United States to recover taxes.

Railroad Co. v. U. S., 101 U. S. 543, 25 L. ed. 1068 (1879), WAITE, C. J.

E. That all assessments shall be made by the Commissioner of Internal Revenue

The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, the determinations, and assessments of all taxes and penalties imposed by this Title [XXXV.—Internal Revenue], or accruing under any former Internal-Revenue Act where such taxes have not been duly paid by stamp at the time and in the manner provided by law.—U. S. Rev. Stat. § 3182 (U. S. Comp. Stat. 1901, p. 2071).

and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June,

The tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of July, eighteen hundred and sixty-two.—Act of Aug. 5, 1861, § 51.

That the duties on incomes herein imposed shall be due and payable on or before the thirtieth day of June eighteen hundred and sixty-three and in each year thereafter until and including the year eighteen hundred and sixty-six and no longer.—Act of July 1, 1862, § 92.

The duties [taxes—Act of July 13, 1866,] on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year until and including the year eighteen hundred and seventy and no longer.—Act of June 30, 1864, § 119; Act of July 13, 1866, § 1.

The taxes on incomes herein imposed shall be levied on the first day of March and be due and payable on or before the thirtieth day of April in each year, until and including the year eighteen hundred and seventy and no longer.—Act of March 2, 1867, § 13.

The tax hereinbefore provided shall be * * * levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years.—Act of July 14, 1870, § 10.

The taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year.—Act of August 28, 1894, § 30.

except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment;

And in case of neglect or refusal to make such return, the assessor or assistant assessors shall assess the amount of his or her income.—Act of July 1, 1862, § 93.

And in case of neglect or refusal to make such return the assessor or assistant assessor shall assess the amount of his or her income, and the duty thereon, in the same manner as is provided for in other cases of neglect and refusal to furnish lists or returns in the provisions of this act, where not otherwise incompatible.—Act of June 30, 1864, § 118.

And in case any person, guardian, or trustee shall neglect or refuse to make and render such lists or returns, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts, or any other evidence.—Act of March 3, 1865, § 1.

And in case any such person shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, his books, accounts, or other evidence.—Act of March 2, 1867, § 13.

In case any person having a gross income as above, of two thousand dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or the assistant assessor shall make such return according to the best information he can obtain by the examination of said person, or of his books, or accounts, or by any other evidence.—Act of July 14, 1870, § 11

And in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a wilfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence.—Act of August 28, 1894.

It was held in Alabama that there is no remedy to correct the mistake of a state assessor honestly made in determining the annual income, when the taxpayer refuses to make the return required by law. To save his rights the taxpayer should make a proper return under protest.

Lott v. Hubbard, 44 Ala. 593 (1870).

In re Lippman, 3 Ben. 95, Fed. Cas. No. 8,382 (1868), U. S. Dist. Ct. S. Dist. N. Y. Blatchford, J., *semble* at p. 98.

and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the in-

come tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the forgoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: Provided further, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds, and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government;

And also all persons, firms, companies, copartnerships, corporations, joint stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical

gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown. Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further*, That in either case above mentioned no return of income not exceeding $3,000 shall be required. D, supra.

That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments, made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.—Subsection J, supra.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor.—Act of June 30, 1864, § 120.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more

years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise."—Act of June 30, 1864, § 122.

And the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an express contract.—Act of July 14, 1870, § 15.

And it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or accounts of officers, or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment.—Act of July 1, 1862, § 86.

And it shall be the duty of all paymasters, and [all—Act of July 13, 1866] disbursing officers, under the government of the United States, or [persons—Act of July 13, 1866] in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers, and [or—Act of July 13, 1866] persons, to deduct and withhold the aforesaid duty of five per centum, and shall at the same time make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment.—Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

And it shall be made the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing

officer, or when settling or adjusting the accounts of any such officer, to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the Commissioner of Internal Revenue.—Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

Provided, that payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.—Act of June 30, 1864, § 123; Act of July 13, 1866, § 1; Act of March 2, 1867, § 13.

And it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers, or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of five per centum, and the pay-roll, receipts, or account of such officers, or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment.—Act of March 2, 1867, § 13.

Provided further, that this section shall not apply to payments made to mechanics or laborers employed upon public works.—Act of July 13, 1866, § 1; Act of March 2, 1867, § 13.

And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the treasurer of the United States, or other officer authorized to receive the same.—Act of March 2, 1867, § 13.

And *provided further*, that in case it should become necessary for showing the true receipts of the government under the operation of this section, upon the books of the Treasury Department, the requisite amount may be carried from unappropriated moneys in the treasury to the credit of said account; and this section shall take effect upon salary and compensation for the month of March, eighteen hundred and sixty-seven.—Act of March 2, 1867, § 13.

And it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay-roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment.

And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasury of the United States, or other officer authorized to receive the same.

Every corporation which pays an employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district, and said employee shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars. —Act of August 28, 1894, § 33.

The practice of the Chancery Masters, with regard to claims by creditors in the administration of insolvent estates, was to allow creditors to prove for the amount of the principal of their debts with interest (less income tax), on debts carrying interest by law, to the date of the judgment or order for administration. The interest (less tax) and any costs allowed, were added to the principal, and dividends were calculated on the total amount. The income tax so deducted was not accounted for to the revenue, because, until the principal sums were paid, it was considered that no income tax was in fact payable. Under the form of order approved by KEKEWICH, J., a creditor was allowed to prove for the balance of principal outstanding with interest thereon to the date of the judgment, without any deduction in respect of income tax. From each payment on account of interest, income tax was to be deducted thereon at the rate current at the time of the payment, and such income tax was to be transferred to the account of the Commissioners of Inland Revenue at the Bank of England.

In re Green, Ball & Ellis [1904] W. N. 78, 105.

In an action for rent the tenant may plead as to part, that he has paid the landlord's property tax to that amount, in respect of the rent due to the plaintiff claimed by the declaration, after he has in fact paid the tax.

Tinckler v. Prentice (1812), 4 Taunt. 549.

In an action for rent, the tenant, having paid the property tax before action brought, has an undoubted right to deduct it at the trial.

Baker v. Davis [1813], 3 Campb. 474.

In an action for rent, to entitle the tenant to deduct the property tax, it is sufficient to prove the payments to the collector, without producing the assessment.

Philips v. Beer (1815), 4 Campb. 266.

The assignee of a term gave up at Michaelmas, to a second assignee, the occupation of a house, and afterwards paid three

quarters of a year's property tax, due at Michaelmas, and handed over the receipt to the succeeding occupier: *Held,* that the succeeding occupier, paying two quarters of a year's rent accruing at the following Christmas, might tender in part of his rent the receipt for property tax given to the former occupier, and might plead it as a payment made by himself.

Clennel v. Read, (1816), 7 Taunt. 50.

An occupier of lands having, during a course of twelve years, paid to the collector of taxes the landlord's property tax, and the full rent as it became due to the landlord, without claiming any deduction on account of the tax so paid, it was held that the occupier could not recover back from the landlord any part of the property tax so paid.

Denby v. Moore (1817), 1 Barn. & Ald. 123, 15 Eng. Rul. Cas. 322.

Where a tenant pays property tax assessed on the premises, and omits to deduct it on his next payment of rent, he cannot afterwards recover the amount as money paid to the use of the landlord.

Cumming v. Bedborough [1846], 15 Mees. & W. 438.

A tenant has a right to deduct from his rent, the amount of the property tax assessed upon and paid by him in respect of his landlord, although the landlord is not, in fact, liable to be assessed, and has, before the payment, claimed exemption, and that exemption has been subsequently allowed.

Swatman v. Ambler (1854), 8 Exch. 72, 24 L. J. Exch. N. S. 185.

By the Income Tax Act, 1842, 560, Schedule (a) No. IV. (ninth) the defendant, as tenant, at a rent of £100 per annum, of licensed premises, of which the plaintiffs were the landlords, was entitled to deduct from the "rent payable" to the landlord a sum in respect of landlord's property tax equal to 1*s.* in the pound on such rent. Under section 3 sub-section 3 and Schedule II. of the Licensing Act 1904, he had previously deducted from the rent the sum of £14 part of a sum of £20 paid by him under sub-section 1, as contribution to the compensation fund created by that act. *Held,* that he was entitled in respect of his payment of landlord's property tax to deduct a sum based on the full rent of £100 and not on that rent less the sum of £14.

Hancock & Co. v. Gillard, 76 L. J. K. B. N. S. 20 [1907] 1 K. B. 47, 95 L. T. N. S. 680, 71 J. P. 9, 23 Times L. R. 12. BIGHAM, J.

A provision in a lease, that so long as any tax upon property or income should be imposed, the lessee should pay further rents depending on the amount of the tax, was held not to be illegal.

Beadel v. Pitt (1865), 11 L. T. N. S. 592, 13 Week. Rep. 287.

An agreement that, if the tenant would continue to pay his rent in full, without any deduction in respect of the landlord's property tax paid by him, the landlord would repay to the tenant all sums which he had paid, or should pay, for landlord's property tax, was held not to be invalid as being contrary to the provisions of the British Act.

Per BRETT, L. J. (1879), L. R. 4 Q. B. Div. p. 609.

A lessor demised to a colliery company, for the term of ninety-nine years, all the mines and minerals or seams of coal, the iron-stone, iron-ore and fireclay lying within and under certain lands, containing an area of 145 acres 3 roods 3 perches, or thereabouts, at the minimum yearly rent of £60 per annum for the first four years, and thereafter at £80 per annum, or, in the option of the lessor, at the rents or royalties therein mentioned, based on the minerals worked or gotten by the lessees. The surface of the land was not comprised in the lease, but had been let by the lessor to another tenant for ordinary farming purposes, and such tenant was duly assessed to income tax under Sched. (A.) as occupier thereof. No assessment to income tax had been made in respect of the said mineral seams, etc., beneath the land. No mineral working or borings had taken place under or upon the land, but the mineral field of which the minerals formed part, had been bored by the lessees of the minerals. The mining operations of the company, however, had not reached the stage of the production of minerals. For each of the two years of assessment, being the first two years of the lease, the lessees had paid the lessor the minimum rate of £60, and upon payment thereof had deducted income tax, and the tax so deducted had not been paid over to the revenue. In the formation of the colliery, the company had also acquired and possessed certain freehold lands, the surface of which had been let by them to tenants for agricultural purposes. These

tenants had paid income tax under Sched. (A.) on these lands, and deducted the tax from the rent paid to the company. The taxed rents so received by the company constituted the sole income of the company chargeable under the Income Tax Acts. No assessment had been made on the company in respect of the colliery or any mines: *Held,* by HAMILTON, J., that the lessor was assessable in respect of the rents received by him from the company, under Sched. (A.), No. II., r. 6, and that the compand was not assessable as occupier under Sched. (A.), No. I., and, further, that the rents received by the lessor were not "annuities," or annual payments *ejusdem generis* with annuities and yearly interest of money, within § 102 of the British Income Tax Act, 1842, or "annuities" within § 24 (3) of the Customs and Inland Revenue Act 1888.

Hill v. Gregory [1912], 2 K. B. 61, 81 L. J. K. B. N. S. 730, 106 L. T. N. S. 603, 6 Tax Cas. 39.

The plaintiff, in consideration of £1,380 to be paid by instalments, granted and sold to the defendant a mine of coal for a term of fifty years; and the defendant covenanted with the plaintiff to pay him £150 down and £150 per year after that time, whether a quantity of coal equal to that amount should be got out of the mine or not; and when, in any year, so many coals should be got out of the mine as would amount to more than £150 per year, then, that the defendant would pay for every Lancashire acre of coal the sum of £100, until the sum of £1,380 should be paid. The defendant, who had never worked the mine, claimed to deduct from a half-yearly instalment a sum paid by him for income tax. *Held,* that the instalment of £150 per year, was not "rent" within meaning of § 60 of the Income Tax Act, 1842 (5 & 6 Vict. chap. 35); and that assuming it to be an "annual payment" within the meaning of § 102, the plaintiff, and not defendant, was liable to be assessed to the income tax.

Taylor v. Evans (1856), 25 L. J. Exch. N. S. 269, 1 Hurlst. & N. 101.

By agreement between the plaintiffs and the defendants' predecessors, and by an assignment from the latter, the defendants acquired the exclusive right of selling and manufacturing articles by a secret process, and were to pay to the plaintiffs,

for forty years, 8 per cent. on the gross receipts of such sales. The plaintiffs resided abroad and were foreigners. Before paying the amount due under the contract to the plaintiffs, the defendants deducted the income tax payable thereon: *Held,* that they were entitled to do so, and that the payment was an annuity or annual payment payable out of profits or gains. Per PHILLIMORE, J. 92 L. T. N. S. p. 683. The defendants "were compelled by the Crown, and as it seems to me rightly compelled by the Crown, to pay on their net profits, without deducting the sum of money which they had to pay away as the 8 per cent. Rightly were they so compelled, because that sum of money was, at any rate as between the Crown and the taxpayers, to be viewed as no deduction from profits, but as part payment in the way of capital expenditure, for the article originally bought, out of which they made their profit."

Delage v. Nugget Polish Co. (1905), 92 N. T. N. S. 682, 21 Times L. R. 454.

The total income of the appellant company of a quinquennial period was 2,515,113l. of this 1,710,382l. was derived from premiums and other sources brought into charge 804,731l. consisted of interest dividends, and rents from which income tax was deducted from the payments made. During the same period 218,-463l. was paid to purchasers. From this same income tax was deducted by the company:—*Held* that the company were entitled to retain the whole of the tax which had been so deducted from the annuities.

London County Council v. Attorney General, 70 L. J. K. B. N. S. 77 (1901) A. C. 26; applied in

Edinburgh Life Assurance Co. v. Lord Advocate (1910), A. C. 143, 79 L. J. P. C. N. S. 41, 101 L. T. N. S. 826, 5 Tax Cases 472.

A firm acting as underwriters, both in their own name and for other persons, under a mandate, by which they were authorized, as agents for these persons, to underwrite in their names and for their account a sum not exceeding a certain amount on each risk, on such terms as the firm thought fit. The firm under their contract at the end of each year drew out a statement of the balance of profit and loss on the underwriting transactions on behalf of each of the persons for whom they underwrote,

and if there was a balance of profit handed it over to him, under deduction of a commission and of a sum which, it was stipulated, should remain in their hands as security: *Held*—on the construction of sections 42 and 51 of the Income Tax Act 1842 that the firm were bound to deliver to the assessor of income tax a list of the persons for whom they conducted the business of underwriting, with the names and addresses of such persons, and to include in such lists the amount of profit belonging to each person.

By a mortgage which recited that the mortgagor was indebted to the mortgagee, and it had been agreed that payment of the debt should be postponed, the mortgagor covenanted to pay on the death of himself or his son, whichever should first happen the amount of the debt with simple interest, and if the aggregate amount of such sum and interest should not then be paid, the mortgagor should pay to the mortgagee interest for such aggregate sum by equal half-yearly payments, the first of such payments to become due six months after the death of the mortgagor or his son. The mortgagor died before his son, and the debt, with simple interest, became thereupon payable:—*Held,* that the mortgagor's legal personal representative, on payment of the debt and interest, might deduct income tax on the interest.

Bebb v. Bunny (1 Kay & J. 216) applied.

Goslings and Sharpe v. Blake (58 L. J. Q. B. N. S. 446, L. R. 23 Q. B. Div. 324) distinguished. Craven's Mortgage In re: Davies v. Crava, 76 L. J. Ch. N. S. 651 [1907] 2 Ch. 448, 97 L. T. N. S. 475, Warrington, J.

The annuities granted by an assurance company are payable out of the whole income of the company—both that portion thereof which is brought into charge for income tax and that from which income tax is deducted at the source.

Edinburg Life Assurance Co. v. Lord Advocate, 79 L. J. P. C. N. S. 41 [1910] A. C. 143, 101 L. T. N. S. 826, 54 Sol. Jo. 133, 26 Times L. R. 146, H. L. (Sc.)

The plaintiff, who was the owner of a term of years in a certain property, which was let for the whole term less twenty-one days at an annual gross rental of £1,925 entered into two contemporaneous deeds with the defendants, who were his sublessees. By the first deed he assigned to the defendants his re-

version in the property in consideration of £1,000 and the deed of covenant of even date. By the latter deed the defendants covenanted to pay the plaintiff the annual sum of £1,000 which was the net rent the plaintiff had previously received from the property. No gross sum was fixed upon as the purchase price of the property. The defendants having in making these annual payments of £1,625 deducted income tax therefrom, the plaintiff sought to recover the sums so deducted: *Held*, that the defendants were right in deducting income tax from the annual payments as falling within section 40 of the Income Tax Act 1853.

Chadwick v. Pearl Life Assurance Co. 74 L. J. K. B. N. S. 671 [1905] 2 K. B. 507, 93 L. T. N. S. 25, 54 Week. Rep. 78, 21 Times L. R. 456. WALTON, J.

By marriage settlement, a husband contracted to pay his wife, should she survive him, "a free life-rent annuity of £1,200 sterling, exempted from all burdens and deductions whatsoever:" *Held*, that the tax might be deducted; even if such a contract implied a covenant not to deduct the tax, it was void under § 103 of the British Income Tax Act, 1842.

Blair v. Allen (1858), 21 Dunlop, 15, 31 Scot. Jur. 1.

Under a deed of separation, a husband bound himself to pay to his wife a free yearly allowance of £1,000. His whole income consisted of an annuity of £3,000 paid to him free of tax, by his father, and of sums voluntarily paid by his father. The husband deducted income tax before paying the annuity to his wife: *Held*, that he was entitled to do so, as it was payable as a personal debt or obligation in virtue of a contract; the question whether he was bound to account for it to the Crown, was a question between him and the Crown, with which the wife had no concern.

Dalrymple v. Dalrymple (1902), 4 F. 545, 39 Scot. L. R. 348.

A public body, which issues stock on which it pays dividends after deducting tax, and also owns and occupies premises for its own purposes on which it pays tax under Schedule A of the Income Tax Act 1842, is not entitled to recoup itself for this tax out of the tax deducted from the dividends on the stock.

Attorney-General v. London County Council, 76 L. J. K. B.

N. S. 454, [1907] A. C. 131, 96 L. T. N. S. 481, 71 J. P. 217, 5 L. G. R. 465, 23 Times L. R. 390—H. L. (e).

A gas company was prohibited by its special Act from paying dividends to its shareholders above a fixed rate per annum. The company claimed to deduct the amount of the income tax from its gross profits before paying any dividend, and then to pay the dividend in full to the shareholders: *Held,* that the company was not entitled to do so, and that in arriving at the rate of dividend, the profits ought to be calculated as inclusive, and not exclusive, of the amount payable in respect of income tax:

Ashton Gas Co. v. Attorney-General [1906], A. C. 10, 75 L. J. Ch. N. S. 1, 93 L. T. N. S. 676.

The London County Council borrowed large sums of money by the issue of stock which, together with the dividends thereon, was specifically charged on the lands, rents, rates, and all other property of the Council, and in paying dividends on the stock deducted income tax pursuant to section 24, sub-section 3 of the Customs and Inland Revenue Act, 1888. The council also owned land, which they occupied for the purpose of their duties, and paid income tax under Schedule A. upon its annual value. The interest on the stock issued was greater than the amount received from rents and interests on loans together with the annual value of the lands which they owned and occupied, and the Council raised the amount by which their income was insufficient to pay the interest on the stocks by rates: *Held,* that the Council were entitled to retain out of the income tax deducted from the dividends upon the stock a sum equivalent to the income tax paid under Schedule A. on the income they derived from rents and under Schedule D. on the income they derived from interest on loans.

Attorney-General v. London County Council, 74 L. J. K. B. N. S. 787 [1905], 2 K. B. 375, 93 L. T. N. S. 378, 53 Week. Rep. 677, 3 L. G. R. 951, 69 J. P. 333, 21 Times L. R. 604. C. A.

Mortgage Interest, etc. Bankers had a mortgage for a fixed sum, and a banking account with their customer: *Held,* that although in dealings between merchants, in discounting bills and the like, and on loans made for short periods, the income tax was not deducted, yet, in a mortgage transaction, the mortgagor

was entitled to deduct income tax. Per SIR JOHN ROMILLY, M. R. 32 Beav. p. 273: "It is necessary, in all these cases, to distinguish between what is a banking account, as between banker and customer, and what is an account as between mortgagor and mortgagee. . . ." (P. 276): "In all cases of mortgagor and mortgagee, when the court has once arrived at the conclusion that it is a case of mortgagor and mortgagee, the mortgagor is entitled to deduct the income tax from the interest paid to the mortgagee, which he necessarily has paid on the property mortgaged, either in the shape of deduction from his rents, or from his dividends prior to that period, and, accordingly, this is so provided by the Act."

Mosse v. Salt (1863), 32 Beav. 269, 32 L. J. Ch. N. S. 756.

A railway company, whose undertaking yielded no profit, paid annually interest on its share capital and debenture stock, and made a return of the amount so paid in the year previous to the year of assessment, and was assessed thereon. The amount paid in the year of assessment having been greater than the amount of the previous year, the company was held liable in respect of the difference, which had been deducted by them on paying the interest, as a debt due to the Crown under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. chap. 8), § 24 (3).

Lord Advocate v. Forth Bridge Rail. Co. [1890] 28 Scot. L. R. 576, 3 Tax Cas. 1.

A debenture trust deed provided for payment of arrears of interest before principal. On the commencement of a debenture holder's action, an order of court directed that the trusts of the said deed should be carried into effect. The rate of interest under the debentures varied. Orders were from time to time made, directing distribution of the funds in court to the debenture holders, in proportion to the amounts certified to be due to them for interest. Those funds were made up of certain rents and royalties paid to the trustees; from which income tax had been deducted. Subsequently the whole of the assets and property comprised in the trust deed were sold, and a final distribution was proposed to be made to the debenture holders. The total of the distribution up to that time, amounted to a payment of about 3*s.* 8¼*d.* in the pound of the certified amount

of interest due, and the proposed final distribution would increase that amount to about 6*s.* 2*d.* in the pound. On an application to the court for an order for a final distribution of the funds in court, and that the payments already made to the debenture holders should be treated as payments on account of capital, it was held by FARWELL, J., that as the debenture holders did not possess the same interests, and the trust deed provided for payment of interest before principal, the debenture holders could not waive their rights under that provision in the absence of agreement of all the debenture holders, although the provision was inserted in the deed for the benefit of the debenture holders, and any payments to them must be made in accordance with the terms of the deed, and that income tax must be deducted from such payments as had not already borne the tax.

Re Queensland Land and Coal Co., Limited, Davis v. Martin (1903) (unreported).

A debenture trust deed executed by a company, provided that the trustees should appropriate the proceeds of the realization of the securities, in the first place towards payment of all arrears of interest on the debentures, and secondly towards payment of the principal. After default, it was ordered, in an action by the debenture holders, that the trusts of the deed should be carried into execution. When practically all the securities had been realized, the trustees had in their hands, after payment of various sums from time to time and of the costs, a sum of money which it was proposed to pay to the debenture holders. It was claimed on behalf of the Commissioners of Inland Revenue, that these payments should be appropriated to interest, and that income tax should be deducted: *Held,* on the facts, and on the construction of the orders directing payment, that as it was clearly for the benefit of the debenture holders that the payments should be appropriated to principal, they ought to be so appropriated without putting the payees to their election, and consequently income tax ought not to be deducted.

Smith v. Law Guarantee and Trust Society [1904] 2 Ch. 569, 73 L. J. Ch. N. S. 733, 91 L. T. N. S. 545.

Interest paid to depositors by savings bank is considered a dividend, and the tax should be withheld therefrom, and paid to the Government.

Ruling, 2 Int. Rev. Rec. 36.

Where a savings bank credits its depositors with interest, the amount thus credited should be treated as a deposit and returned accordingly.

Ruling, 2 Int. Rev. Rec. 92.

Under the Act of June 30, 1864, a railroad deducted the income tax from interest due a municipal corporation. *Held,* that the city could not recover the tax, so deducted, from the corporation. Having neglected to resist the collection of the tax by the United States from the railroad, it was precluded from raising the question of the legality of the tax as against the railroad.

Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. ed. 1043 (1870) U. S. Supreme Ct., Davis, J. And see U. S. v. Railroad Company, 17 Wall. 322, 21 L. ed. 597 (1872) U. S. Supreme, in which the United States was not allowed to collect the tax from the city.

Under the earlier statutes ruled that in a suit to recover taxes illegally collected, a tax on a fund for the payment of interest to nonresident alien bondholders is an excise tax on the business of the corporation and therefore valid.

In a suit to recover payment of coupons brought by a nonresident alien bondholder, *held* that the Act of June 30, 1864, was not intended to apply to nonresident aliens, and that therefore the defendant was not entitled to deduct the income tax from the coupons.

"Congress has since, in express terms * * * imposed a tax on alien nonresident bondholders. The question hereafter will be, not whether the laws embrace the alien nonresident bondholder, but whether it is competent for Congress to impose it, upon which we express no opinion."

Railroad Co. v. Jackson, 7 Wall. 262, 19 L. ed. 88 (1868) U. S. Supreme, Nelson, J., affirming Jackson v. North. Cent. R. R. 2 Int. Rev. Rec. 174, Fed. Cas. No. 7,142 (1865) U. S. C. C. D. Md. Chase, C. J.

"Whether Congress having the power to enforce the law, has authority to levy * * * a tax on the interest due by a citizen of the United States to one who is not domiciled within our limits, and who owes the Government no allegiance, is a question which we do not think necessary to the decision of this case."

Railroad Co. v. Collector, 100 U. S. 595, 25 L. ed. 647 (1879) MILLER, J., affirming Michigan Central Railroad v. Slack, 22 Int. Rev. Rec. 337, Fed. Cas. No. 9,527 (1876) U. S. Cir. Ct., Dist. Mass., CLARK, J.

U. S. v. Erie Railway Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223 (1882) WAITE, C. J., reversing U. S. v. Erie Railway Co. 24 Int. Rev. Rec. 76, Fed. Cas. No. 15,056 (1878) U. S. D. C. S. D. N. Y., BLATCHFORD, J. See concurring opinion by BRADLEY, J., at p. 703, quoted supra.

Quære, whether a declaration that except when the company had contracted otherwise it might deduct the tax from interest due nonresident alien bondholders would, as a matter of international law, relieve the company from its obligation to such bondholders?

Railroad Co. v. Collector, 100 U. S. 595, 25 L. ed. 647 (1879) MILLER, J.

The tax was on the fund in the hands of, and belonging to, the corporation, and not on the bondholder.

So held, of interest and dividends accruing and earned in the last year of the tax, but payable the year following, the tax being therefore collectible thereon.

Barnes v. The Railroads, 17 Wall. 294, 21 L. ed. 544 (1872) U. S. Supreme, CLIFFORD, J. (WAITE, C. J., STRONG, DAVIS, and FIELD, JJ., dissenting.)

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873) U. S. Supreme, MILLER, J.

Semble that under the Act of July 13, 1866, when the corporation has paid its interest in full instead of deducting the tax, the tax falls upon it and not upon the bondholders.

Michigan Central R. R. v. Slack, 22 Int. Rev. Rec. 337, Fed. Cas. No. 9,527 (1876) U. S. C. C. D. Mass., CLARK, J.

Contra, of interest paid to a municipal corporation whose income was not taxable, the tax therefore being not collectible thereon.

U. S. v. Railroad Company, 17 Wall. 322, 21 L. ed. 597 (1872) U. S. Supreme, HUNT, J. But see reporters' note and footnote at p. 335. And see Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. ed. 1043 (1870) U. S. Supreme, in which the city was not allowed to recover from the corporation taxes already paid to the United States.

Contra, also, where the law of a state directed the corporation to "retain" the tax out of interest, such law being unconstitutional as to nonresident bondholders, because it impaired the obligation of the contract.

State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. ed. 179 (1872) U. S. Supreme, FIELD, J., following the judgment in Railroad Co. v. Jackson, 7 Wall. 262, 19 L. ed. 88 (1868) U. S. Supreme, NELSON, J.

But *so held,* of a fund in the hands of a foreign corporation payable without the state to citizens of the state, such fund not being taxable by the state because not within its jurisdiction.

N. Y. etc. Railroad v. Pennsylvania, 153 U. S. 628, 38 L. ed. 846, 14 Sup. Ct. Rep. 952 (1893) HARLAN, J., reversing Commonwealth v. N. Y. etc. R. R. 150 Pa. 234, 24 Atl. 609 (1892).

Contra, also, where the corporation contracted to pay interest without defalcation of taxes, it being permitted to deduct the income tax from the interest due.

Haight v. Railroad Co. 6 Wall. 15, 18 L. ed. 818 (1867) U. S. Supreme, GRIER, J., affirming s. c. *sub nom.* Haight v. Pittsburgh, etc. Railroad Co. 1 Abb. U. S. 81, Fed. Cas. No. 5,903 (1867) U. S. D. C. W. D. Pa., MCCANDLESS, J.

Contra, also, of interest payable in the year following the last year of the tax, the tax not being collectible thereon. [The court distinguishes this case from Barnes v. Railroads on the ground that it appeared there expressly that the dividends (nothing being said of the interest in that case) were earned in the last year of the tax, while in the principal case there was no finding as to when the interest was earned, the only finding being that the interest was paid after the tax lapsed.]

Railroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068 (1879) WAITE, C. J.

So held, however, of dividends earned, declared, and paid during the war and within the Confederate lines by a corporation under the jurisdiction of the United States, such dividends being taxable.

Memphis, etc. R. R. v. U. S. 108 U. S. 228, 27 L. ed. 711 (1882) WAITE, C. J.

Contra, also, of interest accruing and earned in the last year of the tax, but payable the year following. The tax being

therefore not collectible. [In this case it appeared expressly that the interest was paid out of earnings made in the last year of the tax, and thus the case falls within the distinction taken as to Barnes v. Railroads in Railroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068, which is relied on as a controlling authority. The court say, at p. 713, "We do not perceive that the liability of the corporation for tax on this interest, as such, is affected by the circumstance that the interest was paid out of the earnings of the previous year." The distinction should probably be regarded as overruled, though the case taking it is followed.]

U. S. v. Indianapolis, etc. R. R. 113 U. S. 711, 28 L. ed. 1140, 5 Sup. Ct. Rep. 724 (1884), HARLAN, J.

An English company claimed a deduction on account of interest paid to non-resident alien bondholders. *Held,* not allowable.

Alexandria Water Co. v. Musgrave, L. R. 11 Q. B. Div. 174 [1883] BRETT, M. R.

"I am unwilling to give an opinion whether the foreign debenture-holder can be made to repay the company, because such debenture-holder is not now before us, but I confess I have a strong suspicion that those who drew this act meant, as far as English legislation can do so, to make him liable; but whether the foreign debenture-holder can be made to pay or not, that is to say whether the company in paying him can or not deduct the tax, is immaterial. If they can, there is no hardship; if they cannot, the hardship is imposed upon them by the plain terms of the act."

Ibid., BRETT, M. R., at p. 179.

and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000,

New. See British statutes infra.

Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to re-

quire any of such tax to be withheld prior to the first day of November, 1913: *Provided further*, That in either case above mentioned no return of income not exceeding $3,000 shall be required:— Supra in D.

Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government;—Supra in E.

The dividends of a foreign company were payable either at its London agency or abroad, at the option of the shareholder. The agency received no remittance from abroad to pay the dividends demanded of them in London in a particular year, because the agency profits were sufficient for the purpose: *Held*, that the dividends paid in London were entrusted to the agency for payment, within the meaning of the Income Tax Act, 1853, § 10; but that in assessing the dividends, an allowance should be granted in respect of that portion which arose from the previously taxed profits of the English agency: Gilbertson v. Ferguson (1881), 7 Q. B. D. 562; 46 L. T. 10; 1 Tax Cas. 501.

The banking company, which had its head offices in Australia, and carried on a banking business at a branch office in London, paid interest on its Interminable Stock. Such interest was payable out of its total profits, including the profits made in the United Kingdom. For the year ending April 5th, 1901, the profits of the London branch amounted to £9,419, on £1,000 of which income tax was paid. During the same period, the company paid, through the London branch, the sum of £68,539, in respect of interest on Interminable Stock, to certain holders of such stock in the United Kingdom, and upon this sum, income tax was deducted and paid over to the Revenue. The company, by petition of right, claimed repayment of the income tax paid on the above sum of £1,000. It was held on February 17th, 1909, by Channell, J., in the King's Bench Division, that a proportionate part only of the tax on the sum of £1,000 was returnable to the company, as the interest was payable out of the whole profits of the company: Queensland National Bank v. The King (1909) (unreported).

New. See British statutes infra.

by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States),

and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons;

All persons, firms, or corporations undertaking as a matter of business

or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bill of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe;— Infra in E.

New. See British statutes infra.

but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

New. See British statutes infra.

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided further*, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.—supra.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the government to ascertain and verify the due withholding and payment of the income

tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefore, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

These regulations are printed infra.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

New. See British statutes infra.

"The defeasance clause of the mortgage was thus: '*Provided,* always, that if the said railway company or their successors do well and truly pay to the said Haight, the said $100,000 on the days and times hereinbefore mentioned, together with the interest payable thereon, without *any* deduction, defalcation or abatement to be made of anything for or in respect of *any* taxes, charges or assessments whatsoever, then,' &c. The railway company having retained five per cent. on the amount of the coupons, as they paid them, Haight brought suit against it, contending that it could not deduct the taxes from the interest due him, because it had, in the language of the act of Congress, 'contracted otherwise.' " *Held,* that the mortgage could deduct from its coupons the five per centum thereof paid to the United States under § 122 of the Act of June 30, 1864.

Haight v. Railroad Co. 6 Wall. 15, 16, 18 L. ed. 818, quoted in full, infra.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the commissioner of internal revenue and approved by the Secretary of the Treasury. The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which the total net income exceeds twenty

thousand dollars and does not exceed fifty thousand dollars, and two per centum per annum upon the amount by which the total net income exceeds fifty thousand dollars and does not exceed seventy-five thousand dollars, three per centum per annum upon the amount by which the total net income exceeds seventy-five thousand dollars and does not exceed one hundred thousand dollars, four per centum per annum upon the amount by which the total net income exceeds one hundred thousand dollars and does not exceed two hundred and fifty thousand dollars, five per centum per annum upon the amount by which the total net income exceeds two hundred and fifty thousand dollars and does not exceed five hundred thousand dollars, and six per centum per annum upon the amount by which the total net income exceeds five hundred thousand dollars. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section.—Subsection A, supra.

The rules and regulations are printed infra.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such persons shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.—Subsection G (d) infra.

In case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax.

In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and

subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes. U. S. Rev. Stat. § 3176 (U. S. Comp. Stat. 1901, p. 2068) as amended by this act. Subsection I.

Only one penalty can be required for all failures to make returns prior to the beginning of the action therefor. *So held,* also, of failures to pay the tax.

U. S. v. Brooklyn, etc. Ry. 14 Fed. 284 (1882), U. S. C. Ct. E. Dist. N. Y., Benedict, J.

U. S. v. N. Y. Guarantee, etc. Co. 8 Ben. 269, Fed. Cas. No. 15,872 (1875), U. S. Dist. Ct., S. Dist. N. Y. Blatchford, J.

The power of the assessor upon finding the first return to be false to add the penalty is not a judicial power in such a sense as to render the statute conferring it unconstitutional.

In re Brown, 3 Int. Rev. Rec. 134, Fed. Cas. No. 1,977 (1866) U. S. Dist. Ct., N. Dist. N. Y., Smalley, J.

Where the returns of a manufacturer are understated, even where no attempt to default the revenue appears, as a general rule the penalty of 50 per cent. should be assessed, and when fraud appears, the specific penalty of fine should be added.

Ruling, 3 Int. Rev. Rec. 60.

The fine of 50 per cent. in case of fraudulent or understated returns is to be assessed on the deficiency of the tax withheld, and not on the whole amount of the tax.

Ruling, 3 Int. Rev. Rec. 60.

G (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association,

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to

deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise.—Act of June 30, 1864, § 122.

That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal-navigation, slack-water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations. The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations. —Act of August 28, 1894, § 32.

That every corporation, joint stock company, or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company, or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed.—Corporation Tax Law, 1909, infra, 3.

Net income of a corporation is liable to taxation whether declared in dividends or not.

Commonwealth v. Ocean Oil Co., 59 Pa. 61, 14 Mor. Min. Rep. 126 (1868).

Semble that dividends are not net earnings or income and a corporation is taxable on its net earnings, although it declares no dividends and had commuted all taxes on its dividends by the payment of a lump sum.

Jones, etc., Co. v. Commonwealth, 69 Pa. 137 (1871).

Net earnings, whether carried to construction account or

devoted to payment of interest on subsidy bonds, issued to the corporation by the United States, are taxable under the Act of June 30, 1864, as amended by the Act of July 13, 1866.

Sioux City, etc., R. R. v. U. S. 110 U. S. 205, 28 L. ed. 120, 3 Sup. Ct. Rep. 565 (1884), Bradley, J.

"Net earnings," as used in a stipulation of counsel, construed to mean "all profits * * * carried to the account of any fund or used for construction."

Ibid.

An oil company was incorporated with a capital of one million dollars. *Held,* that the statutory phrase "net earnings or income" meant net income after deducting expenses, but not net income after applying the proceeds of the sale of its oil to the repayment to the stockholders of the capital stock until the capital was repaid.

Commonwealth v. Ocean Oil Co. 59 Pa. 61, 14 Mor. Min. Rep. 126 (1868).

Commonwealth v. Penn Gas Coal Co. 62 Pa. 241, 14 Mor. Min. Rep. 163 (1869).

A tax on gross receipts is not a tax on dividends. *So held,* where a city sued under a special statute to recover taxes paid on dividends on shares which it owned and it appeared that the corporation had paid only the tax on its gross receipts under § 103 of the Act of June 30, 1864.

Commissioners of Sinking Fund v. Buckner, 48 Fed. 533 (1891), U. S. Cir. Ct., D. Ky., Barr, J.

The profits of a corporation may include a sum distributable to customers instead of to the shareholders. So *held,* when an insurance company, in consideration of increased premiums paid, agreed to return to the insured two-thirds of whatever "gross-profits" the company should have received from such premiums at the end of every five years, which two-thirds are taxable.

Last v. London Assurance Co., L. R. 10 App. Cas. 438 (1885), reversing s. c. L. R. 12 Q. B. Div. 389 (1884), Day, J., and L. R. 14 Q. B. Div. 245 (1884).

"The question is very important. * * * If the contention of the Crown is right, income tax will be payable in all cases in which employers have agreed with employed that,

besides fixed wages, the employed shall receive what is called a share of the profits. The income tax will apply to co-operative societies strictly so-called, and be payable on a sum falsely called profits, with no deduction of the wages contingently payable to workmen, if gross profits enable them to be paid. * * * I think it would be most disastrous, and most unreasonable."

Ibid. LORD BRAMWELL, dissenting, at p. 448.

The surplus over expenses of premiums paid in by the members of a mutual insurance company was redistributed to the members. *Held,* not taxable. Distinguishing Last v. London Assurance Co., L. R. 10 App. Cas. 438 (1885).

N. Y. Life Ins. Co. v. Styles, L. R. 14 App. Cas. 381 (1889), H. L.

"Several persons contribute sums towards a book club to continue for a year. At the end of the year the expenses are less than the fund. Are the amounts returned 'profits'?"

Ibid., Lord BRAMWELL, dissenting *arguendo,* at p. 387.

Profits "used for construction" were distinguished from profits "carried to the account of any fund" in the Act of June 30, 1864; in the Act of July 14, 1870, the latter were included, but the former not. *Held,* therefore, that profits used for construction were not taxable under that act.

Marquette, etc., R. R. Co. v. U. S., 123 U. S. 722, 31 L. ed. 302, 8 Sup. Ct. Rep. 319 (1887), WAITE, C. J., reversing U. S. v. Marquette, etc., R. R., 17 Fed. 719 (1883), U. S. Cir. Ct., W. Dist. Mich. WITHEY, J.

Profits "used for construction" do not include earnings expended in keeping the property up to its normal condition. So *held,* of earnings expended in building a stone bridge in place of an old wooden one deemed insecure.

Grant v. Hartford, etc., R. R. 93 U. S. 225, 23 L. ed. 878 (1876), BRADLEY, J., affirming Hartford, etc., R. R. v. Grant, 9 Blatchf. 542, Fed. Cas. No. 6,159 (1872), U. S. Cir. Ct., Dist. Conn., SHIPMAN, J.

Sed quære, of the increase in value of the new bridge over the old one? Ibid.

Semble, that where the new bridge is more costly that the old, the increase of value is profits used in construction.

Ibid.

Where the increase of value came from a fund devoted to

general repairs of a plant, so that it is merely "withholding proper expenditure from one portion of the line and devoting it to another," *held,* that such expenditure is not part of the "profits used in construction."

Ibid.

The declaration of a dividend was conclusive, and the corporation was not allowed to set up a loss, e. g. by embezzlement, which it failed to take into account in declaring the dividend as a defense to an action for taxes on the dividend under a former statute.

Central National Bank v. U. S., 137 U. S. 355, 34 L. ed. 703, 11 Sup. Ct. Rep. 126 (1890), HARLAN, J., affirming U. S. v. Central National Bank, 24 Fed. 577 (1885), U. S. Cir. Ct., S. Dist. N. Y., WALLACE, J., which reversed s. c., 15 Fed. 222 (1883), U. S. Dist. Ct., S. Dist. N. Y., BROWN, J., and see s. c., 10 Fed. 612 (1882), U. S. Dist. Ct., S. Dist. N. Y., BROWN, J.

When a tax is on capital stock measured by dividends, the corporation cannot deduct from a declared dividend the amount contributed by stockholders to meet losses.

Columbia Conduit Co. v. Commonwealth, 90 Pa. 307, 14 Mor. Min. Rep. 197 (1879).

"To constitute a cause of action under this section (§ 120 of the Act of June 30, 1864), the complaint is sufficient, if it aver either a dividend declared or the earning of profits, which, instead of being divided, have gone to increase the surplus fund of the corporation."

BENEDICT, J., in U. S. v. Brooklyn, etc., R. R., 14 Fed. 284 (1884), U. S. Dist. Ct., E. Dist. N. Y.

When a debt is canceled by the consolidation of the debtor and creditor companies, it is paid, but presumably not paid out of earnings or profits, and no tax is collectible thereon.

U. S. v. Louisville, etc., R. R., 33 Fed. 829 (1888), U. S. Cir. Ct., Dist. Ky., BARR, J.

An insurance company granted an annuity in consideration of a lump sum paid at the time of granting the annuity. *Held,* that the annuities were not "payable out of profits" and therefore not taxable.

Gresham Life Assurance Soc. v. Styles [1892] A. C. 309,

House of Lords, reversing s. c. L. R. 25 Q. B. Div. 351 (1890), and s. c. L. R. 24 Q. B. D. 500 (1890).

"An annuity to the widow of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

Ibid. Lord WATSON, at p. 320.

The insurance company, under its charter, reserved a percentage of its earnings as a fund to meet losses, and issued certificates to its members to the effect that they had a *pro rata* interest therein. *Held,* under a law taxing capital, that such a fund was capital.

Sun Mutual Ins. Co. v. The Mayor, 8 N. Y. 241 (1853).

A statute exempting the "stock" of a corporation exempts also the "gross income." Such income undistributed is the property of the corporation.

State ex rel. So. Car. R. Co. v. Hood, 15 Rich. L. 177 (1868), S. Car. Ct. App.

In determining the amount of taxable gains of a corporation under Section 120 of the Act of June 30, 1864, only such losses as were ascertained and settled during the period covered by the return can be deducted.

Ruling, 3 Int. Rev. Rec. 100.

In determining the net profits of a national bank under sections 120 and 121, the amount of semi-annual tax on the capital circulation on deposits paid by the bank during the period covered by the returns of such profits, may be deducted the same as other expenses, but no deduction should be made on account of the tax of five per cent, withheld from dividends paid upon surplus funds.

Ruling, 5 Int. Rev. Rec. 74.

In determining the amount of tax upon the net gains of the corporations mentioned in sections 120 and 122, no deduction should be made on account of that part of the earnings, being the interest upon railroad bonds owned by them, upon which a tax has been withheld; or on account of tax withheld by other corporations from dividends payable to them. The law does not authorize any other deduction from the tax on divi-

dends and surplus profits, net gains, than that for tax once paid by the same corporation on that part of its surplus funds which is taken to complete dividends.

Ruling, 5 Int. Rev. Rec. 91.

Insurance companies in ascertaining the amount of their taxable gross receipts for premiums and assessments, cannot deduct the amounts paid for re-insurance.

Ruling, 3 Int. Rev. Rec. 13.

Under the Corporation-Tax Law of August 5, 1909, *held,* that corporations of the following character are not organized for profit, and consequently not subject to the income tax therein imposed: A corporation, the sole purpose of which is to hold title to a single parcel of real estate, subject to a long lease, and to receive and distribute the rents and the proceeds of the disposition of the rents.

Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361, reported in full infra.

A railroad company which has leased its railroad to another corporation, which operates the same exclusively, when the former maintains its corporate existence, collects and distributes to its stockholders the rentals and dividends from other investments.

McCoach v. Minehill & Schuylkill Haven R. R. Co., 228 U. S. 295, 57 L. ed. 2, 33 Sup. Ct. Rep. 419, quoted in full infra.

A corporation organized to own the stock of another company, which has no assets except such stock, its office furniture and a small bank deposit, and transacts no business except to receive the dividends from the operating company and distribute the same.

U. S. v. Nipissing Mines Co. 206 Fed. 431.

It was further held that an association was not organized for profit and was consequently not subject to the Corporation Income Tax, when it consisted of trustees holding land under a trust for the purpose of buying, improving, holding and selling the same, although they had issued transferable certificates to shareholders.

Eliot v. Freeman, 220 U. S. 178, 55 L. ed. 424, 31 Sup. Ct. Rep. 360.

Under the Corporation-Tax Law of August 5, 1909, it was held that the following corporations were organized for the purpose of profit and subject to the Corporation Income Tax therein imposed: A company which owns and leases taxicabs and collected rents from the same.

Motor Taximeter Cab Company Case, No. 432—Flint v. Stone Tracy Co. 220 U. S. 107, 171, 55 L. ed. 389, 421, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

Realty companies formed for the purpose of owning, holding and managing real estate, which leased buildings to different tenants, although one of them transacted no business except the managing and leasing of a hotel.

Cedar Street Company v. Park Realty Company, No. 415—Flint v. Stone Tracy Co., 220 U. S. 107, 169, 55 L. ed. 389, 420, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

A corporation owning and leasing ore lands, which received from tenants a royalty dependent upon the quantity of ore mined by them.

Mitchell v. Clark Iron Company, No. 446—Flint v. Stone Tracy Co. 220 U. S. 107, 108, 170, 55 L. ed. 389, 421, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

A wharf company, operating under a charter, authorizing it to acquire lands and flats, to lease, manage and improve the same, and to receive dockage and wharfage.

Cook v. Boston Wharf Company, No. 457—Flint v. Stone Tracy Co., 220 U. S. 107, 170, 55 L. ed. 389, 421, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

A mining company agreed to pay its landlord a royalty on its profits. To secure him, it was agreed that the payments should not fall below a fixed sum, but that if at any time there was a surplus of royalties over such sum, the company might apply that surplus to any previous deficiency of royalties below such sum. *Held,* that the surplus of a given year was taxable as profits although there was a deficiency upon which it was applicable.

Broughton, etc. Coal Co. v. Kirkpatrick, L. R. 14 Q. B. Div. 491 (1884).

"It is true that in one sense the tax will be paid twice; but it will not be paid twice by the same person."

Ibid., Grove, J., at p. 498.

On November 2, 1895, the S. A. R. granted H. J. S. a concession for the construction of a railway, and the S. A. R. guaranteed to a company which was formed to take over the railway interest at 4 per cent on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On Feb. 18, 1902, the British Government gave notice to expropriate the railway under the terms of the concession. They recognized the validity of the concession and admitted liability to pay all arrears of interest. They paid 97,506l. 16s. 11d. as "guaranteed interest on share capital at 4 per cent. per annum from January 1, 1899 to Nov. 14, 1903" in addition to the other payments on the expropriation. *Held,* that the 97,506l. 16s. 11d. was not a part of a sum paid by the British Government as the price of the company's undertaking that it must be treated as the gross revenue of the company earned as a trading company from Jan. 1, 1901 to Nov. 14, 1903, and that after deducting certain expenses incurred by the company during the same period the benefit of the three years' average must be applied and income tax was payable on one third of the balance only.

Pretoria-Pietersburg Railroad v. Elwood, 98 L. T. N. S. 741 —C. A.

An Indian government for the sake of having a railway through its dominions agreed to pay an English company an annuity of 5 per cent. on its capital, of which the company was to distribute a part as interest on its capital and a part into a sinking fund. *Held,* the latter part is subject to the income tax.

Nizam's State Ry. Co. v. Wyatt, L. R. 24 Q. B. Div. 548 (1890).

The memorandum of association of a limited company, a rubber syndicate, set forth that the objects of the company were (*inter alia*) first, the acquisition and development of a rubber estate in the Malay Peninsula; secondly, the acquisition and development of rubber estates there or elsewhere, and the carrying on of the business of manufacturing and trading in rubber; and thirdly the sale of the whole or any part of the business undertaking and property of the company. The company acquired two estates and expended money on their development: but be-

fore the estates reached the stage of producing rubber, the company, finding its capital inadequate fully to develop the estates, sold its whole undertaking to a new company at a price which exceeded by 9,000l. the whole sums spent by the selling company in acquiring, and developing the estates: *Held,* that the business of the company not being the buying and selling of rubber estates but the production of and trading in rubber, this sum of 9,000l. could not be regarded as income assessable for income tax. California Copper Syndicate v. Inland Revenue, (6 F. 894) distinguished. Assets Co. v. Inland Revenue (24 R. 578) and Stevens v. Hudson's Bay Co. (25 Times L. R. 709) followed.

Tebrau (Johore) Rubber Syndicate v. Farmer [1910] S. C. 906, 5 Tax. Cas. 658, Ct. of Sess.

Annual income "is what passage money and freights this road makes each year; of that an account must be rendered, and on that the per cent. must be estimated." *So held,* in spite of the objection that the company had leased the whole road and received no income except the rent.

Goldsmith v. Augusta, etc. R. R. 62 Ga. 468 (1879).

The defendant's charter provided that it should pay three per cent. of its gross earnings annually to the state, and then read, "for the purpose of ascertaining said earnings, an accurate account shall be kept by the company of all receipts and expenditures on account of the operation of said railroads." *Held,* that rent for the right to run trains over its lines was not a part of its gross earnings, or receipts on account of the operation of its road, and need not therefore be included in the account.

State v. St. Paul, etc. R. R. 30 Minn. 311, 15 N. W. 307 (1883).

To hold otherwise would be in the nature of double taxation, as the lesser road would have to pay the same tax on the same property.

Ibid.

and every insurance company,

And every such net income shall be ascertained by deducting from the gross amount of income of such * * * insurance company received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a

condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any * * * in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further*, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further*, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its third indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its capital stock outstanding at the close of the year or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a * * * insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; from all sums paid by it within the year for taxes imposed under the authority of the United States, or of any State or Territory thereof, or imposed by the government of any foreign country. G (b) infra.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any

corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Under the Corporation Tax Law of 1909, *held* that so-called dividends of a mutual life insurance company working upon the level premium plan, which consisted merely of the portion of the loading of the premium charges in excess of the cost of insurance and were returned annually to policy-holders after the first year, so far as the same were used to reduce subsequent periods, were not "income * * * received," and were, consequently, not subject to the tax.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199.

Held, further, that this rule did not apply to a "dividend" declared in the case of a full-paid participating policy, wherein the policy-holder had no further premiums to pay, the dividend constituting a participation in the profits and income of the invested funds of the company. "It seems proper to say that dividends of the kind under consideration should not be confused with dividends declared in the case of a full-paid participating policy, wherein the policy holder has no further premium payments to make. Such payments having been duly met, the policy has become at once a contract of insurance and of investment. The holder participates in the profits and income of the invested funds of the company. His case is, therefore, radically different from that of a policy holder whose dividend represents merely the excess cost of his insurance, which excess at his request, and pursuant to the terms of his policy, has been applied in abatement or reduction of a future premium. But it may be urged that the fund for which the so-called dividends are declared on mutual policies is likewise largely derived from interest on the company's investments, and that this shows that in a real sense such dividends are, after all, declared from the earnings, profits, or income of the company. This proposition might be entitled to weight, were it not for the fact that, in so far as the fund from which such dividends are declared is produced from interest on the company's invested funds, it has

already been subjected to, and "has paid, taxes under the act in question. Furthermore, while perhaps not illegal, it is in a sense unfair, and therefore presumably contrary to the intention of Congress, as between a mutual company and a stock company, to tax the dividends in question as income received. The poilcy holder in a stock company pays a uniform and fixed premium each year. The premium in his case is not 'loaded,' but is presumed to represent cost as nearly as may be for the reason that the stability of his policy is assured by the stock of the company, and not, as in the mutual plan, by premium payments avowedly in excess of the cost of the insurance. It would seem to be fair and equitable, therefore, between the two classes of companies, to tax them upon the premiums actually paid them by their policy holders, and not to tax one class upon premium payments actually received and the other upon payments which at the utmost are only 'constructively received.' "

Ibid. 198 Fed. 199, 212.

Under the British Act, *held*: "That the surplus premium income of a mutual insurance company, derived from and annually returned to participating policy holders, is not assessable to income tax as profits or gains arising from any profession, trade, or vocation exercised in the United Kingdom."

New York Life Insurance Co. v. Styles, 59 L. J. Q. B. N. S. 291, L. R. 14 App. Cas. 381 (1889).

Per Lord HERSCHEL: "I am aware that the surplus income with which we are concerned is called 'profits' in the documents of the appellants. But both the learned Lords who formed the majority in Last's Case repudiated the idea that because moneys, which were not in fact profits, are erroneously so called, this would make them 'profits' within the meaning of the Income Tax Acts. I entirely concur. We must look to see whether they are really so or not. Persons who agree to contribute to a common fund for mutual insurance certainly would not in ordinary parlance be regarded as carrying on a trade or vocation for the purpose of earning profit. Let us see how the so-called profit arises. It is due to the premiums which the members are required to pay being in excess of what is necessary to provide for the requisite payments to be made upon the deaths

of members, and not being, as the case states they were intended to be, commensurate therewith. This may result either from the contributions having, owing to an erroneous estimate or overcaution, been originally fixed at a higher rate than was necessary, or from the death rate being lower than was anticipated. Can it be properly said that, under these circumstances, the association of mutual insurers has earned a profit? The members contribute for a common object to a fund which is their common property; it turns out that they have contributed more than is needed, and therefore more than ought to have been contributed by them, for this object; and accordingly their next contribution is reduced by an amount equal to their proportion of this excess. I am at a loss to see how this can be considered as a 'profit' arising or accruing to them from a trade or vocation which they carry on. It is true the alternative is allowed them of leaving the excess in the common fund, and so increasing their representatives' claim upon it in case of death; but I cannot think that this makes any difference. Mr. Bremner truly pointed out that, if these so-called bonuses were to be regarded as representing profits, it followed that, if the premiums were trebled, the profits would be increased in proportion."

Ibid.

Per Lord MacNaghten: "The rates fixed by the tables are taken as being sufficient to provide for expenses, to meet liabilities, and to leave a margin for contingencies. What is to become of the surplus, if everything goes right? The practice is to take an account every year of assets and liabilities, and to give the insured the benefit of the surplus, either by way of reduction of premium or by way of addition to the sum insured. It can make no difference in principle whether the surplus is so applied, or paid back in hard cash. In either case it is nothing but the return of so much of the amount contributed as may be in excess of the amount really required. I do not understand how persons contributing to a common fund in pursuance of a scheme for their mutual benefit, having no dealings or relations with any outside body, can be said to have made a profit when they find that they have overcharged themselves, and that some portion of their contributions may

be safely refunded. If a profit can be made in that way, there is a field for profitable enterprise, capable, I suppose, of indefinite expansion."

Ibid.

"We think the so-called 'dividends to policy holders' are not 'net earnings or income,' and do not represent such earnings, and that defendant is not liable to tax in respect to them. Notwithstanding the mass of testimony and exhibits on this point, including the ingenious questions of the able counsel on either side, followed by answers from the officers of the company, called as witnesses, not always as clear or intelligent as might have been expected, the facts are few and simple, as we have found them above. It is strenuously contended by the able special counsel for the commonwealth that, because these abatements are entered on the books of the company as 'dividends to policy holders' or 'surplus to policy holders,' they therefore represent net earnings or income, and furnish a measure of the liability of the company to taxation. Whatever these statements may be called, they are in reality what we have stated in the finding of facts. The amounts they represent are mere negative quantities, abstract statements, not of what is, or is to be, received or to 'come in,' but what is not to be received. The calculations are made for the express purpose of determining how much of the amount which the company might receive shall not be received, and one of the items which make up the apparent amount upon the basis of which this calculation is made is the sum which was abated and not received during the preceding year. In short, the whole proceeding is merely a method by which the books of the company are made to show what would be the actual gross debtor and creditor accounts of the company, if the whole amount of the premiums was collected and a part was afterwards returned to the policy holders, while in fact it is neither collected nor returned. * * * It is a fallacy to suppose that the real nature of the transaction is that the policy holder pays his whole stipulated premium and receives his share of the dividend or distribution of surplus."

Commonwealth v. Penn Mutual Life Insurance Co. 1 Dauphin Co. Rep. (Appellate Branch Common Pleas Pa.) 233.

"The appellant, every year before a premium falls due, de-

termines how much of the stipulated premium it will exact from the insured. The diminution, whether it be called a 'dividend' or 'surplus,' goes in the abatement of the renewal premium, and the insured pays only the difference. The insurance company, therefore, received, not the full renewal premium, but the difference between the stipulated premium and this dividend or portion of surplus. All that the insurance company receives in cash or otherwise is this difference. * * * The commonwealth is claiming to tax the appellant upon money which it never received at all. The appellant says that it is only required to pay upon money which it receives in cash or otherwise, except that it admits that it is bound to pay the full tax on the original premium receipted for on the face of the policy, without regard to whether it in fact received such premium or not. The answer sets out the course of business of the appellant, and shows what money it has received and what money it has not received, and shows that the difference between it and the commonwealth is that the commonwealth is attempting to charge it for the full amount of premiums stipulated for in the face of the policy, although it does not exact, and has not the right to exact, such full amount, being required to give to the policy holder the advantage of the dividend or surplus, or whatever it may be called, in the diminution of the nominal premium. * * * Now, the truth is that this overpayment (called 'dividend') is not a dividend in any sense of the term; nor is the failure of the company to collect the full amount of the premium in after years a credit in any sense of the term. A sum of money applied as a credit can never be used for the same purpose again. If I owe A. $50, and he owes me five notes of $150 each, when I credit him on the first note with the $50 I owe him, he cannot require me to credit the same sum on the remaining four notes as they fall due. But that is just what the state is insisting on being done in this case. The policy holder makes the overpayment of premium technically called 'loading,' and the company holds this sum and calls it a 'dividend,' and the state says that this is a crediting of the same sum on each of the after-accruing premiums, and should be considered as so much collected each year by the company, and as having been paid 'otherwise' than as

cash. In order to bring the matter before our minds distinctly, let us assume that in 1900 A. takes out a policy in the appellant company in which the stipulated premium is $150 per annum, that of this sum $100 would be sufficient to carry the risk in ordinary times, and that $50 is what is called 'loading,' collected in order to meet the contingencies of the future. Now, in 1900 the policy holder pays the full amount of the premium, $150. After that the company says to him, 'You need only pay $100 per annum; and, as long as the $50 of over-payment you made in 1900 remains unexhausted, your annual premiums will be really $100, instead of $150, as stated in the policy.' The account of five years would be stated as follows:

1900, beginning of the insurance period, premium paid	$150 00
1901, premium paid	100 00
1902, premium paid	100 00
1903, premium paid	100 00
1904, premium paid	100 00
1905, premium paid	100 00
Total	$650 00

"Obviously the total amount of money paid by the policy holder and received by the insurance company is $650, and it has received no more, either in cash or otherwise; and on the sum so received it is conceded that appellant has paid the tax due. If we look only at the method of bookkeeping of the appellant and have regard only to the terms it uses, there is much in the appearance of the case thus presented to warrant the position of the commonwealth as to its right to tax the so-called 'dividends' said to be annually credited on the premiums due from policy holders; but the law looks below the mere appearance of things, and has regard to the reality, and, thus looking, it sees that the appellant misuses the terms 'dividend' and 'credit,' and, as shown above, pays no dividend and allows no credit, but that, in reality, all that it does is to collect on the first premium a sum sufficient to meet the contingencies of any given year of the future, and then abstains from collecting any further overpayment while the first remains on hand."

Mutual Benefit Life Insurance Co. v. Commonwealth, 128 Ky. 174, 107 S. W. 802.

"The dividend declared in any year is applied in reduction of the next maturing premium on the policy of the insured. It follows that, where a dividend has been apportioned and applied to the reduction of the premium named in the contract, the policy holder pays to the company, and the latter receives in cash only the difference between the maximum premium and the amount of the dividend, and these dividends, as the facts disclose, represent a surplus arising out of premiums previously paid, upon which the defendant company has already paid the state its two per cent. tax. The word 'premium,' as used in this statute, is subject to the limitations expressed in the words which follow and in a measure control its use, to wit: 'Received in this state in cash or other obligations.' The statute apparently does not require the company to pay the 2 per cent. tax on the full amount of premium named in its policies in this state. If so, the law would have so stated. On the contrary, the language "is 'two per cent. on all premiums received in cash and other obligations in this state.' "

Minnesota v. Mutual Benefit Life Insurance Co., District Court, Second Judicial District, Minnesota, Dec. 15, 1909, not reported, but quoted in 198 Fed. 208.

Under the British Act, *held* that sums or bonuses payable to participating policy-holders in a life insurance company constituted "profits or gains" of the company assessable to the income tax.

Last v. London Assurance Corporation, 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax Cas. 100 (1885).

Under the Corporation Tax Law of 1909, which provides for the deduction of the net addition, if any, required by law to be made within the year to reserve funds, *held* that a deduction might be made of the additions to the reserve fund to secure payment upon supplementary policy contracts. These consisted of policies under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of years, instead of a lump sum.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 212.

"These obligations seem to come fairly within the definitions of reserve, as above given. Notwithstanding the policy holder has died, there still remain unpaid under the policy certain installments not presently due, but which will mature from time to time in the future. These are as much policy obligations as they would have been if payable in one sum immediately upon the death of the insured. They have a value, and that value must be estimated, and, when estimated, adequate provision made for their payment as they mature, which can only be done by the establishment of a suitable reserve. Furthermore, such reserves are 'required by law' within the meaning of the act. As appears by the agreed statement of facts, the commissioners of insurance of all the states require the establishment of a reserve to cover the obligations of the company on such supplementary policy contracts."

Ibid. 198 Fed. 199, 213.

Under the Corporation Tax Law of 1909, *held* that, for the purpose of taxation the corporation's statement should be made on a cash or revenue basis; that uncollected and deferred premiums and interest accrued and due, but not actually received, should not be included.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 214.

An insurance company having one body of shareholders, carried on three branches of business, viz., marine, fire, and life insurance: *Held,* by the Queen's Bench Division, that the three branches must be treated as one business, and the profits calculated on the results of that business taken as a whole, and that additions made to the life fund, out of the annual receipts, were not subject to income tax as profits.

Last v. London Assurance Corporation (1884), L. R. 12 Q. B. Div. 389, 52 L. T. N. S. 604, 2 Tax Cas. 100. There was no appeal from the decision on these points. There was an appeal, however, to the House of Lords on another question. The Lords held that the sums or bonuses payable to "participating policy holders" in a life insurance company, constituted "profits or gains" of the company assessable to income tax. The

profits should be calculated on the principle that whatever profit was made should be assessed, though the company may have bound themselves to pay it, or part of it, to the policy-holders whose policies were still in force at the quinquennial period.

Last v. London Assurance Corporation (1885), L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax Cas. 100.

A company carried on the business of fire and life insurance: —*Held,* that the net profits and gains from the two branches of business were to be massed together as one undivided income, assessable according to the rules applicable to the 1st case under Sched. (D.). *Fire*—Seeing that fire insurance policies are contracts for one year only, the premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be fairly taken as the profits and gains of the company, without taking into account or making any allowance for the balance of annual risks unexpired at the end of the financial year of the company. *Life*—There is a radical difference between fire and life insurance. The profits and gains of a company on its business can only be ascertained by actuarial calculation, proceeding upon the result of the statutory quinquennial investigation, or of the usual periodical investigation in companies established before the statute, or of the triennial investigation prescribed by Sched. (D.) of the Income Tax Acts.

Scottish Union and National Assurance Co. v. Smiles (1889), 16 R. 461, 26 Scotch L. R. 330, 2 Tax Cas. 551.

A mutual life insurance association in which there were no shareholders, the funds of which belonged to the members, the participating policy-holders having a surplus beyond the expenditure for the year, which was appropriated for the benefit of the members, was *held not* to be liable to be assessed to income tax in respect of their transactions relating to participating policies as constituting a trade or vocation from which profits or gains arose or accrued within the meaning of the Income Tax Acts.

New York Life Insurance Co. v. Styles (1889), L. R. 14

App. Cas. 381, 59 L. J. Q. B. N. S. 291, 61 L. T. N. S. 201, 2 Tax Cas. 460.

In estimating the profits and gains of an insurance company, interest on investments, which has not suffered deduction of income tax at its source, must be taken into account.

Scottish Union and National Assurance Co. v. Smiles (1889), 16 R. 461, 26 Scotch L. R. 330, 2 Tax Cas. 551.

A life insurance company, receiving untaxed interest on a portion of its investments, was held liable to assessment in respect thereof, although the amount of the interest on its other investments, on which tax had been deducted, exceeded the profits earned by the company. Per Lord ESHER, M. R. L. R. 22 Q. B. Div. p. 450: "Interest of money ought not first to be taxed as a separate subject-matter of taxation, and then brought again into account in arriving at the profits and gains of a business and so taxed again."

Clerical, Medical and General Life Assurance Society v. Carter (1889), L. R. 22 Q. B. Div. 444, 58 L. J. Q. B. N. S. 224, 37 Week. Rep. 346, 2 Tax Cas. 437.

A life insurance company derived the bulk of its gross incomes from taxed sources. The amount of this taxed income exceeded the company's net profits. The company received in addition, certain interest from which tax was not deducted:—*Held,* that this interest was properly assessable under Cases III. and IV. of Sched. (D.) in § 100. Per the Lord President, 5 Tax Cas. p. 226: "I thought it had been settled beyond all possibility of doubt, that inasmuch as the Income Tax Acts do not only deal with profit in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed, when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money—its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above charge on the profits. It must elect between the two."

Revell v. Edinburgh Life Insurance Co. (1906), 5 Tax Cas. 221.

A fire and life insurance company having its head office in the United Kingdom, carried on business in the United Kingdom and in certain foreign countries and British colonies. By the laws of certain of the latter countries, the company was required, as a condition of transacting fire insurance business therein, to deposit certain minimum amounts with representatives of the governments there, which were required to be invested in accordance with the local laws. So long as the company carried on business in those countries, or any liability remained in respect of any risks, it was unable to recover any of the said sums, but the deposits were held as a fund out of which the claims of policy-holders in those countries could be paid. The company also made certain voluntary investments in those countries of sums which consisted of accumulated profits of the business made in past years, which investments were made, not under any legal obligation, but for the purpose of deriving income or profit. All the above classes of investments produced interest which was received by the company's agents or branches abroad, and such interest was not in fact remitted to the United Kingdom:—*Held,* by the Court of Appeal, that the interest or dividends from the investments in question, formed part of the profits or gains of the trade, adventure, or concern carried on, and were assessable under the 1st Case of Sched. (D.), and that the Crown had an option to tax under Case I. or Case IV. The facts in the second and third cases were similar.

Liverpool and London and Globe Insurance Co. v. Bennett; Brice v. Northern Assurance Co.; Brice v. Ocean Accident and Guarantee Corporation, Limited, [1912] 2 K. B. 41, 81 L. J. K. B. N. S. 639, 106 L. T. N. S. 323, 27 Times L. R. 279.

organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year:

Now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States, or in

Alaska, or in the District of Columbia. * * * Such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States.—Corporation Tax Law of August 5, 1909.

Where the American Bell Telephone Company, a Massachusetts corporation, leased telephones in Boston to be delivered there for use in New York, the rental to be a certain percentage of the royalties or rentals received by the licensees by subletting these telephones, with provisions in the leases that in case of default, the lessor might collect these rents and royalties in the name of the lessees, *held,* that the lessor, the American Bell Telephone Company, was not "doing business in" the state of New York, and was consequently not liable to the New York state tax on its dividends.

People v. American Bell Telephone Co. 117 N. Y. 241, 22 N. E. 1057 (1889).

Same point, Commonwealth v. American Bell Telephone Co. 129 Pa. 217, 18 Atl. 122 (1889).

See, also, U. S. v. American Bell Telephone Co. 29 Fed. 17 (1886), per Mr. Justice Jackson.

A New York statute (L. 1880 Ch. 542, § 2, as amended by L. 1881, Ch. 361), provided that every foreign and domestic corporation "doing business in the state," with certain exceptions, "shall be subject to, and pay a tax, as a tax upon its corporate franchise or business, into the treasury of the state annually, to be computed as follows: If the dividends made or declared annually by such corporation" exceeded six per cent. "at the rate of one quarter mill upon the capital stock, for each one per centum of dividends so made or declared." If the dividends were less, the tax was at a less rate. It was *held* that the tax on a foreign corporation must be estimated upon the value of its whole capital stock, and that it was entitled to no deduction because part of its profits were made and part of its property situated without the state.

People v. Equitable Trust Co. 96 N. Y. 387 (1884).

People v. Horn Silver Mining Co. 105 N. Y. 76, 11 N. E. 155 (1887).

A foreign corporation carrying on business abroad, and earning profits there, had an agency carrying on business in Eng-

land and earning profits there. *Held* that the agency was taxable in respect of all profits earned by it, and also upon so much of the dividends declared by the foreign corporation, and paid in England, as was derived from profits arising in England.

Gilbertson v. Fergusson, L. R. 7 Q. B. Div. 562 (1881), affirming, s. c. L. R. 5 Exch. Div. 57 (1879).

A corporation domiciled in England is taxable with respect to all profits earned by it, whether transmitted to England or not.

Cesena Sulphur Co. v. Nicholson, and

Calcutta Jute Mills Co. v. Same, L. R. 1 Exch. Div. 428 (1876).

A corporation domiciled in England is liable to the tax on all profits earned by it, although a part of such profits are earned abroad and never transmitted to England.

Imperial, etc., Assn. v. Nicholson, 37 L. T. N. S. 717 (1877), Exch. Div. KELLY, C. B.

A company may be a "person residing in the United Kingdom" within the meaning of section 2, Schedule D, of the Income Tax Act, 1853, notwithstanding that it is incorporated and registered abroad.

Goerz v. Bell, 73 L. J. K. B. 448; [1904] 2 K. B. 136; 90 L. T. 675; 53 H. R. 64; 20 T. L. R. 348—Chanwell, J.

A company was incorporated and registered abroad for the purpose of prospecting and developing mining properties abroad and of floating companies for working them and of making a market for shares in those companies. The general meetings of the company were held abroad. The head office was in London. The directors had power to appoint agencies for managing the affairs of the company abroad. The meetings of the directors, some of whom resided abroad, and some in the United Kingdom, were held in London. The accounts were made up and audited, the dividends were declared, and the books of the company were kept in London. The greater part of its capital was invested abroad. The greater part of its business was done in London: *Held,* that the company was "a person residing in the United Kingdom" within the meaning of section 2, Schedule D. of the Act.

Ibid.

A foreign company, the Great Northern Telegraph Company of Copenhagen, had three marine cables in connection with Aberdeen and Newcastle, which communicated with the post office telegraph lines in the United Kingdom. The company had workrooms in London, Newcastle and Aberdeen. Messages from the United Kingdom were forwarded over the post office lines and the company's cables to Denmark, and from thence to Russia, China, Japan and India, by the company's wires and those of foreign governments. The post office collected the total charges paid for the transmission of the messages, and, after deducting their dues, handed the balance to the company, who retained the amount due to them for the transmission of messages over their cables and lines, and paid the residue to the various governments, etc., respectively entitled to it. The company made no profits from the transmission of messages over the land lines in the United Kingdom: *Held,* by the Court of Appeal, that the company carried on a trade in the United Kingdom, and were chargeable on the profits thereof accordingly.

Erichsen v. Last, 8 Q. B. D. 414; 51 L. J. Q. B. 86; 45 L. T. 703; 30 W. R. 301; 1 Tax Cas. 351, 357; 4 Tax Cas. 422 (1881).

A company incorporated and registered in Christiania (Norway), where its registered office was, its share list and books were kept, and where the shareholders' meetings were held, owned a ship. The two managers were resident in Norway, one of whom acted as director of the management. The chartering and all voyage receipts and disbursements were dealt with by Messrs. Wingate & Co., a firm resident in Glasgow, who received and retained all funds until required for payment of expenses or dividends. The form of the assessment was as follows: "Messrs. Wingate & Company for barque 'Chanaral'": *Held,* that the company was not resident in the United Kingdom, but that it exercised a trade within the United Kingdom, for the profits of which the Glasgow firm, as its agents, were assessable to income tax, and that the form of the assessment was not invalid, although not expressly made upon Messrs. Wingate & Co. as agents for their principals.

Wingate v. Webber, 34 Sc. L. R. 699; 3 Tax Cas. 569 (1897).

A foreign company had agents in England, who submitted all orders to their principals, the latter reserving the right to reject those not satisfactory. On receipt of the principals' authority, the agents accepted the offers. All goods for delivery in the United Kingdom were shipped free on board at Boston, U. S. A., and consigned to Liverpool in the name of the agents, who distributed them to the customers. Payment of the greater part of the amounts arising from the sales was made by customers' cheques to the agents, which were either forwarded to the principals at Boston, or paid into the agents' banking account in the United Kingdom, the amounts being subsequently remitted by the agents' drafts. In certain cases, when larger credit was required, customers forwarded their acceptances direct to the principals: *Held,* that the contracts, and the delivery of the goods, were made in the United Kingdom, and that the company exercised a trade in the United Kingdom. Per WILLS, J., (p. 34): "Even if the contract has been made in New York, an executory contract for sale, when he does deliver the goods in this country he exercises a trade and carries on a business."

Thomas Turner (Leicester) Limited v. Rickman, 4 Tax Cas. 25 (1898).

Under § 59 of the New Zealand Land and Income Assessment Act, 1900, income derived from business taxable, includes "the profits derived from or received in New Zealand." The respondent company had its head office in London, and carried on the business of telegraphy in New Zealand, Australia and elsewhere, and sent messages from New Zealand to Madras. The Government owned the telegraphs in New Zealand and received the entire charges for messages, deducting the cost of transmission over its own lines, and of transmission to New South Wales, the balance being paid to the Government of New South Wales. The messages then travelled by stages to the place whence they were dispatched by the respondent company's cable. The company received the balance after deduction of the various charges. No contracts were made between the New Zealand Government and the company respecting the company's operations: *Held,* that the company's profits for the transmission of messages over its own cables were not taxable, not being "derived from or received in New Zealand."

Commissioner of Taxes for New Zealand v. Eastern Extension Telegraph Co. A. C. 526; 75 L. J. P. C. 84; 95 L. T. 308; 22 T. L. R. 730 (1906).

A company's profits consisted of a commission deducted from moneys received in London, under agency contracts of sales effected in London, of goods brought from New Zealand, as a result of transactions made by the company in New Zealand—*Held,* that the profits were actually made in London, and that the earlier transactions in New Zealand were insufficient to render those profits taxable under the New Zealand Land and Income Assessment Act, 1900, as profits derived from business carried on in New Zealand.

Lovell and Christmas v. Commissioner of Taxes, A. C. 46; 77 L. J. P. C. 31; 97 L. T. 651; 24 T. L. R. 32.

A French company, with its head office at Paris, and owning phosphate mines in Algeria, employed the appellants, who carried on business as merchants in Glasgow, as its sole principal agents for the sale of phosphates in the United Kingdom. The contracts for sale were entered into by the agents in the United Kingdom, who had authority to sell at or over minimum prices fixed by the company, and without reference to the company. No stock was kept in the United Kingdom. The company had sub-agents in various parts of the United Kingdom, who were appointed by the agents, subject to the company's approval. The agents were paid by commission. Delivery of the phosphates was made out of the United Kingdom. The contracts provided for payment of the price of the goods "by cash in London." In practice, however, the payment was made by means of crossed cheques, the cheques being made payable in some cases to the company and in other cases to the agents. The agents did not cash any cheques but invariably forwarded them to the company in Paris as received (indorsed where necessary), and did not pay them into a bank in the United Kingdom:—*Held* (1) (*diss.* Lord Dundas), that the company did not exercise a trade within the United Kingdom; and (2) that the appellants were not agents "having the receipt of any profits" within the meaning of § 41. Per Lord Ardwall (p. 224): "I am of opinion that the words 'having the receipt of any profits or gains' apply to the actual receipt of money, and do not apply

to a case such as there is here, where the agreement of parties was that the appellants had no power to make the price of goods payable to themselves, and where in point of fact very few cheques were made payable to them; and that the fact that contrary to the regular course of business, customers occasionally made cheques payable to the appellants, really does not alter the question, as the appellants invariably sent to the company in Paris the cheques as received, and did not in any case cash them themselves and put the money into their own bank account, which, indeed, would be a breach of the contract of agency between them and the company. I think it is clear that the contemplation of the statute was that receivers, factors, or agents, should only be liable to pay income tax for their principals, where they have in their own hands the means of recouping themselves by having the receipt in money of profits and gains belonging to their principals." Per Lord DUNDAS (p. 229): "But it does not follow, and is not in my opinion the case, that the agents in merely transmitting the cheques, etc., to Paris, were persons 'having the receipt of any profits or gains belonging to' the company. Per Lord SALVESEN (p. 235): "The words 'in receipt of profits,' must, I apprehend, be construed as meaning lawfully in receipt of profits, and I apprehend that an agent is not lawfully in receipt of money due to his principal under a contract of sale made in the principal's name, because the purchaser chooses, or is induced by the agent, to make the cheques payable to him. The intention of the statute is not to make the agent personally liable for the income tax due by the foreign firm, but only to make him so liable where he has the opportunity of recouping himself out of moneys belonging to the foreign firm."

Crookston Brothers v. Furtado S. C. 217; 43 Sc. L. R. 134; 5 Tax Cas. 602 (1911).

Certain mutual life assurance societies invested sums of money in Australia at interest. The interest accruing was not specially remitted to the United Kingdom, but was reinvested abroad. There was no share capital, and no dividend payable, and no profits were divisible among the policy-holders in the year of assessment. The interest was included in the revenue accounts: *Held,* that the interest was not received in the United Kingdom, and accordingly was not assessable under the 4th case.

Forbes v. Scottish Widows' Fund and Life Assurance Society; Forbes v. Scottish Provident Institution (1895), 23 R. 322, 33 Scot. L. R. 228, 3 Tax Cas. 443.

"They do not invest in those investments for the sake of investment, or for the sake of making profit by those investments, but for the sake of having a fund invested in America to answer the requirements of the American law. In effect, it seems to me that the £5,502 is received in this country, because owing to the exigencies of the American law this money would have to be sent out from here if it were not otherwise provided; and if it can be otherwise provided, and so relieve the funds of the company in this country from being despatched from this country, it is a mere matter of convenience, which does not appear to me in any way to alter the nature or character of the moneys for the purpose of investment."

Norwich Union Fire Insurance Co. v. Magee (1896) 73 L. T. N. S. 733, 44 Week. Rep. 384, 3 Tax. Cas. 457. Per Wright, J. (73 L. T. N. S. p. 735). See however now, Gresham Life, etc. Society v. Bishop, infra.

An English life assurance society transacted business through its branches in India. It held securities in India, and retained there the interest arising therefrom as a matter of commercial convenience to meet Indian claims and expenditure, and but for such retention, an equal sum would have been required to be remitted to India. The interest was treated as a part of the divisible profits upon which dividends were paid in England, although the interest was never actually received in the United Kingdom:—*Held,* that the interest was constructively received in the United Kingdom and assessable under the 4th case.

Universal Life Assurance Society v. Bishop (1899), 68 L. J. Q. B. N. S. 962; 81 L. T. N. S. 422; 4 Tax Cas. 139. See however now, Gresham Life, etc. Society v. Bishop, infra.

Part of the revenue of a proprietary insurance company consisted of interest arising from foreign investments. This interest, although included in the company's accounts, and taken into consideration in estimating the profits divisible among the shareholders, was not required to meet the company's liabilities in the United Kingdom, which were met out of funds at their disposal there, and accordingly did not require to be, and in

fact was not, remitted home, but was reinvested abroad: *Held* (*diss.* Lord YOUNG), that this interest was not chargeable under the 4th case as having been received in the United Kingdom.

Standard Life Assurance Co. v. Allan (1901), 3 F. 805, 38 Scot. L. R. 628, 4 Tax Cas. 446.

An English life assurance society had funds invested in foreign countries upon securities there, and invested the interest, dividends, and rents therefrom in those countries, or remitted them directly to other foreign countries for investment. The society also carried on business in foreign countries, and applied the sums arising from foreign securities either in investment in those countries, in establishment or other expenses there, in remitting directly to other foreign countries for investment, or for the general purposes of the society abroad. The society included the amounts above mentioned as money received, in their accounts, and took them into account in arriving at the amount of the funds set out in their balance-sheets upon which surpluses or profits were ascertained. The shareholders were also paid an annual dividend of 5 per cent. out of the profits:—*Held,* by the House of Lords, reversing the decision of the Court of Appeal, that taking the interest into account was not equivalent to a receipt in the United Kingdom, and that income tax was not chargeable upon that part of the interest which was not remitted to the United Kingdom. Per Lord MACNAGHTEN, [1902] A. C. p. 293: "The difficulty seems to have arisen from a misunderstanding or a misapplication of the judgment in the New Mexico Case (14 R. 98). That was a very special case. Whether the decision was right or wrong, it can have no bearing upon the question now before your lordships. Speaking for myself, I think the decision was right. In that case it seems to me, in the transmission to this country of money which the company was free to distribute, and the transmission to America, by way of exchange, of an equivalent amount which the company was bound to reinvest, the company acted as their own bankers, and did for themselves, by an entry in their books, what might have been done less conveniently and less economically by an ordinary bank or financial agent on their behalf." Per Lord SHAND (p. 294): "In the case of the Scottish Mortgage Company of New Mexico

14 R. 98, the *species facti* were different, for there the company treated the money as received in this country, and merely saved themselves the expense of cross-remittances. It appeared there that the company was not entitled to divide the money earned abroad, unless it was received as profits in this country. It was treated as so received merely to avoid the expense and inconvenience of cross-remittances—money sent home, and the same amount sent back by cross-cheques or drafts. That was a material point in the decision of the case, showing that the money had been really received in this country." Per Lord BRAMPTON (p. 295): "For the Crown the case of the Scottish Mortgage Company of New Mexico v. Commissioners of Inland Revenue, 14 R. 98, was much relied upon. I am not satisfied with the correctness of the judgment in that case, but, assuming it to be sound, it is distinguishable from the present case, for in paragraph 13 of the printed case before the Court of Session, there was an admission that the amount charged with the income tax had been applied in payment of interest and dividends to debenture and share holders in Glasgow." Per Lord LINDLEY (p. 298): "Authorities have been referred to, and especially the Scottish cases of the New Mexico Co. (14 R. 98), Forbes (23 R. 322), and the Standard Life Assurance Co. (3 F. 805). The first case was very peculiar. Money received by the company's agents abroad was clearly and unmistakably treated by the company as remitted to and received by it here, and money here was treated by the company as remitted abroad in exchange for it. The exchange was effected by a book entry, but that entry was the business mode of carrying out cross-remittances which it would have been unbusinesslike and really childish to have effected in any other way. But thinking, as I do, that that case may be properly upheld, I am not prepared to adopt it as a new starting-point for further inferences. The language of the statute is the true starting-point in each case.

Forbes' Case (23 R. 322), and the Standard Life Assurance Co.'s Case (3 F. 805) were both based on this principle, and were, in my opinion, both clearly rightly decided. The Court of Appeal, in my opinion, considered this case distinguishable from the New Mexico Case (14 R. 98), but I am unable to so regard it. Assuming them to be indistinguishable, it would,

in my opinion, be more correct to overrule the New Mexico Case (14 R. 98), than to decide the present appeal in favor of the Crown."

Gresham Life Assurance Society v. Bishop, [1902] A. C. 287, 71 L. J. K. B. N. S. 618, 86 L. T. N. S. 693, 50 Week. Rep. 593, 4 Tax Cas. 464.

Where money has been sent abroad for investment and the sums are sent home out of a bank account in which there are no separate statements of capital and income, and the whole amount left abroad after the remittances have been sent home is larger than the sums originally sent abroad, those remittances must be considered as representing interests or profits, and be held liable for income tax, for the year in which they were sent home.

Scottish Provident Institution v. Allan, 72 L. J. P. C. N. S. 70 [1903] A. C. 129; 88 L. T. N. S. 478, 67 J. P. 341, 4 Tax Cas. 591, 19 Times L. R. 432 H. L. (Sc.)

A mutual insurance society in Scotland, assessed under the 4th case, upon sums remitted from Australia in 1898, disputed liability on the ground that such sums were not in payment of interest, but in repayment of capital. Between 1885 and 1890, the society had remitted various sums to Australia for investment. The interest thereon was received by their representatives there, and paid into a bank account there; and, prior to 1893, it was not brought to this country but invested in Australia. In and after 1893, certain sums were remitted to Scotland from Australia, and in 1898 the sum upon which income tax was now claimed was so remitted. After all these remittances had been made, there still remained in Australia a sum greater than the total of all the sums originally sent out for investment:—*Held* (1), that where the remittances had been made by the society's representatives from their account in Australia, in which repayments of capital had been intermixed with interest, and where the particular remittances had not been definitely identified with any particular repayments of capital, they must, at least, so long as a sum equal to the amount of capital originally remitted for investment to Australia remained still invested there, be presumed to be remittances of interest, and that the society were liable to be assessed upon such sums; but that (2)

they were not liable to be so assessed upon a sum which had been remitted in part repayment of a loan direct to the society in London by the borrower's solicitor in Australia.

Scottish Provident Institution v. Allan, [1903] A. C. 129, 72 L. J. P. C. N. S. 70, 88 L. T. N. S. 478, 5 F. 10, 40 Scot. L. R. 605, 4 Tax Cas. 591.

Interest from foreign securities, derived by an insurance society from its American investments, was not remitted to the United Kingdom, but was reinvested in America in bonds payable to bearer, and on mortgages of real property. These bonds and mortgages, with coupons attached thereto, were sent to the United Kingdom and kept at the society's head office:—*Held,* that the interest had not been "received in Great Britain," and accordingly was not chargeable with income tax.

Scottish Widows' Fund Life Assurance Society v. Farmer; Farmer v. Scottish Widows' Fund Life Assurance Society [1909], S. C. 1372, 46 Scot. L. R. 993, 5 Tax Cas. 502.

An insurance company, out of funds accumulated in America, representing interest arising from foreign and colonial securities there prior to July, 1907, purchased in July, 1907, bearer bonds in New York, which were sent to the United Kingdom, and received at the head office of the company in the same month. These bonds were kept there for safe custody until August and October, 1908, when they were sold, and their proceeds received at the head office in Edinburg. The company having been assessed for the year ending April 5th, 1908, it was held that the interest was chargeable to income tax, as although it had been earned prior to the year of assessment, it had been "received in Great Britain in the current year," within the meaning of the rule in the 4th case.

Scottish Provident Institution v. Farmer [1912] S. C. 452; 49 Scot. L. R. 435, 6 Tax Cas. 34.

Constructive Remittance.—A company was formed principally for borrowing money in this country, and investing it abroad on the security of land. The interest received abroad was brought into account in the company's books, by retaining out of the funds raised here a sum equivalent to that interest after defraying the working expenses in America, and out of this sum were paid all the working ex-

penses in Great Britain, the interest to debenture-holders and depositors, and a dividend to the shareholders for the year of assessment. The money itself, therefore, did not require to be sent home:—*Held,* that the company was rightly charged under the 4th case of Sched. (D.), but that it might also have been charged under the 1st case. Per the Lord President, 2 Tax Cas., p. 174: "The interest received by the company's agents in America has not been *in forma specifica* sent to this country. The money received by the agents in America remains in their hands, and it remains in their hands for investment there. But then an equivalent for the amount of that interest is retained by the managers in this country, out of money borrowed by them on debentures for the purpose of being sent out to America and invested upon foreign securities there, so that the one sum is just set against the other in the books of the company here. They have received it in this most proper sense of the term, that it enters their books in this country as such interest, and is paid away as such."

Scottish Mortgage Co. of New Mexico v. McKelvie (1886), 14 Reports 98, 24 Scot. L. R. 87, 2 Tax Cas. 165.

(See the comments on this case in Gresham Life Assurance Society v. Bishop, [1902] A. C. 287, supra.)

Wright, J. [1893] 2 Q. B. Div. p. 516, said: "It remains to consider whether the dividends retained in America are within that limitation. It appears to me, that if the fourth case were applicable, those dividends ought in point of law to be regarded as received in England. For reasons of convenience the money is not sent over, but it forms part of the profit dealt with and divided by the company here; and the effect of what is done is that a debt due and payable in England to the foreign shareholders is discharged by the money retained in America. That, I think, is equivalent to a receipt of the money here."

Bartholomay Brewing Co. v. Wyatt, [1893] 2 Q. B. 499, 62 L. J. Q. B. N. S. 525, 69 L. T. N. S. 561, 42 Week. Rep. 173, 3 Tax Cas. 213. (See however now, Gresham Life, etc. Society v. Bishop, supra).

Provided, however, that nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares,

Nor to such savings banks, savings institutions or societies as shall,

first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus.—Act of August 28, 1894, § 32.

"*Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual."—Corporation-Tax Law of August 5, 1909.

"1st. As to Mutual Savings Banks.—Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. No limit is fixed to the property and income thus exempted—it may be $100,000 or $100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the Comptroller of the Currency, sent by the President to Congress December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted was 646, and the total number of stock savings banks was 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way; and yet the 646 are exempt and the 378 are taxed. He also showed that the total deposits in savings banks were $1,748,000,000."

Pollock v. Farmers' Loan & Trust Co. 157 U. S. 429, 597, 39 L. ed. 759, 825, 15 Sup. Ct. Rep. 673, per FIELD, J.

"If this statement of the exemptions of corporations under the law of Congress, taken from the carefully prepared briefs of counsel and from reports to Congress, will not satisfy parties

interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the Constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any doubt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension."

Pollock v. Farmers' Loan & Trust Co. 157 U. S. 429, 598, 599, 39 L. ed. 759, 825, 826, 15 Sup. Ct. Rep. 673, per Field, J.

or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations,

Including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations, or companies which make loans only to their shareholders.—Act of August 28, 1894, § 32.

"3d. As to Building and Loan Associations.—The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable institutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, in Dayton, Ohio, has a capital of $10,000,000, and Pennsylvania has $65,000,000 invested in these associations. The census report submitted to Congress by the President, May 1, 1894, shows that their property in the United States amounts to over $628,000,000. Why

should these institutions and their immense accumulations of property be singled out for the special favor of Congress and be freed from their just, equal, and proportionate share of taxation when others engaged under different names, in similar business, are subjected to taxation by this law? The aggregate amount of the savings to these associations, by reason of their exemption, is over $600,000 a year."

Pollock v. Farmer's Loan & Trust Co. 157 U. S. 429, 598, 39 L. ed. 759, 825, 15 Sup. Ct. Rep. 673, per FIELD, J.

"As to the objections that certain organizations, labor, agricultural and horticultural, fraternal and benevolent societies, land and building associations, and those for religious, charitable or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax."

Flint v. Stone Tracy Co. 220 U. S. 107, 173, 55 L. ed. 389, 422, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312, per DAY, J.

nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual,

Nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes.—Act of August 28, 1894, § 32.

In Great Britain the application of profits to charitable or other purposes, or the motive with which a trade is carried on, does not affect the liability.

See Atty. Gen. v. Black (1871), L. R. 6 Exch. 308, 40 L. J. Exch. N. S. 194, 25 L. T. N. S. 207, 19 Week. Rep. 1114, 1 Tax. Cas. 52; Mersey Docks v. Lucas (1883), 8 App. Cas. 891, 53 L. J. Q. B. N. S. 4, 49 L. T. N. S. 781, 32 Week. Rep. 34, 2 Tax. Cas. 25; Paddington Burial Board v. Commissioners of Inland Revenue (1884), L. R. 13 Q. B. Div. 9, 53 L. J. Q. B. N. S. 224, 50 L. T. N. S. 211, 32 Week. Rep. 551, 2 Tax. Cas. 46; Blake v. Imperial Brazilian Rail. Co. (1884), 1 Times L. R. 68, 2 Tax. Cas. 58; Nizam's State Rail. Co. v. Wyatt (1890), L. R. 24 Q. B. Div. 548, 59 L. J. Q. B. N. S. 430, 62 L. T. N. S. 765, 2 Tax Cas. 584; Harris v. Corporation of Irvine (1900), 2 F. 1080, 37 Scot. L. R. 799, 4 Tax. Cas. 221.

"But when once an individual or a company has in that proper sense ascertained what are the profits of his business or his trade, the destination of those profits, or the charge which has been made on those profits by previous agreement or otherwise, is perfectly immaterial:" per Lord HALSBURY, L. C.

Gresham Life Assurance Society v. Styles [1892] A. C. 309, 62 L. J. Q. B. N. S. 41, 67 L. T. N. S. 479, 41 Week. Rep. 270, 3 Tax. Cas. 185.

A hospital founded by voluntary contributions for the treatment of insane persons, accepted as patients (a) persons who paid remunerative prices, and (b) poor persons who did not pay the full cost of their maintenance and treatment, which was paid for out of the profit derived from the former class of patients, and applied its surplus income to the extension and improvement of the hospital buildings:—*Held,* that the surplus was profit assessable to income tax (Sched. D.), and that § 105, *post,* did not apply.

St. Andrew's Hospital (Northampton) v. Shearsmith [1887], L. R. 19 Q. B. Div. 624, 57 L. T. N. S. 413, 35 Week. Rep. 811, 2 Tax. Cas. 219.

Assuming for the purpose of argument, (1) that the institution was a "corporation for charitable purposes only," and (2) that profit made by carrying on the hospital was "yearly interest or other annual payment," it was *held* that such profits were not, by reason of the application of them to making the hospital more fit for the purposes for which the hospital was conducted, "payments applied to charitable purposes only," so as to exempt the institution from payment of income tax under Schedule (D.).

Ibid.

In delivering judgment in favor of the Crown, Lord COLERIDGE, C. J., referred to the assumption (2) that the profits to be taxed was "yearly interest or other annual payment," and said: "I do not think it is," an expression of opinion noted by CHARLES, J., in delivering judgment in Psalms and Hymns v. Whitwell, infra, as "in accordance with the decision which we pronounce in this case."

Ibid.

(This case was followed in Needham v. Bowers (1888), L.

R. 21 Q. B. Div. 436, 59 L. T. N. S. 404, 37 Week. Rep. 125, 2 Tax Cas. 360, supra.)

A hospital, wholly self-supporting, *held,* not exempt as a charitable corporation, though founded upon voluntary contributions, and though the services of the managers were gratuitous and the surplus over expenses had been devoted to charity or to improvement of its own resources.

Ibid.

The income of a burial board which was created under a statute, *held,* taxable although it was applied in reduction of the poor-rates of the parish. It was a joint enterprise of the parish which was not charitable in its nature, and was not merely a means to accomplish parish ends, because a profit was distinctly contemplated.

Paddington Burial Board v. Commissioners of Inland Revenue, L. R. 13 Q. B. Div. 9 (1884).

"Charitable purposes" applies to the relief of poverty, and a religious trust is therefore not exempt as devoted to charitable purposes.

Baird Trustees v. Inland Revenue, 25 Scot. L. R. 533 (1888), Sc. Ct. Sess.

Free public libraries are not exempt as being "literary or scientific institutions."

Andrews v. Mayor, etc., of Bristol, 61 L. J. Q. B. N. S. 715 (1892).

A society of engineers, the income of which is in fact appropriated to the promotion of science, and not for the promotion of the professional interest or advantage of its members, although such interest or advantage is incidentally promoted, is exempt under a statute exempting income "legally appropriated and applied * * for the promotion of science."

Commissioners of Inland Revenue v. Forrest, L. R. 15 App. Cas. 334 (1890), H. L., affirming Matter of Institution of Civil Engineers, L. R. 20 Q. B. Div. 621 (1888), which reversed s. c., L. R. 19 Q. B. Div. 610 (1887).

The income of a trust of which a half was to be devoted to the support of Moravian missionary establishments, one-fourth to the support of children of Moravian ministers, and one-fourth to the support of single persons of the Moravian faith, *held,* exempt as devoted to "charitable purposes."

Queen ex rel. Pemsel v. Commissioners, L. R. 22 Q. B. Div. 296 (1888).

Lord ESHER, M. R., and LOPES, L. J., put their decision on the ground that the words "charitable purposes" were to be taken in their popular signification of aid to the poor, and that the trust in question was within that definition.

FRY, L. J., however, decided on the ground that by those words was intended the technical meaning which included all the uses mentioned in statute 43 Eliz. C. 4.

Commissioners v. Pemsel [1891] A. C. 531, adopting FRY's view, Lord HALSBURY, L. C., and Lord BRAMWELL, dissenting.

But see Commissioners v. Scott, (1892) L. R. 2 Q. B. Div. 152, affirming Matter of Bootham Ward Strays, 60 L. J. Q. B. N. S. 612 (1891).

Certain trustees published a hymn book, and, in accordance with the trust deed, distributed the profits among widows and orphans of Baptist ministers and missionaries:—*Held,* that the profits were chargeable under Sched. (D.), and were not an "annual payment" within § 105, so as to be exempt when applied to charitable purposes.

Trustees of Psalms and Hymns v. Whitwell (1890), 7 Times L. R. 164, 3 Tax Cas. 7.

A society, founded for the diffusion of religious literature, sold Bibles, etc., at a depository or shop in Edinburgh, and sent out colporteurs, whose duties were to sell Bibles, etc., and to act as cottage missionaries. The sales at the Edinburgh shop resulted in a profit, but the colportage was carried on at a loss. The net result of the whole operations was an annual loss, which was met by subscriptions:—*Held,* that the colportage was not a trade, and that the loss on it could not be set against the profits from the bookseller's business carried on at the shop. Per the Lord President, 33 Scot. L. R. p. 291: "The legitimacy of the importation into the account of the colportage must depend entirely on whether it, as well as the shop, is a business, trade, or adventure, carried on for commercial purposes, and on commercial principles."

Religious Tract and Book Society of Scotland v. Forbes (1896), 33 Scot. L. R. 289, 3 Tax Cas. 415.

A philanthropic association having classes, a gymnasium, etc., also conducted, on ordinary business lines, a restaurant,

which was open to the general public. On its first branch, the association did not cover expenses, but made a profit on the restaurant:—*Held,* that the losses on the other branches could not be deducted from the profits on the restaurant.

Grove v. Young Men's Christian Association (1903), 67 J. P. 279, 88 L. T. N. S. 696, 19 Times L. R. 491, 4 Tax Cas. 613.

nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare:

Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico:

That nothing herein contained shall apply to states, counties, or municipalities.—Act of August 28, 1898, § 32.

The revenue of a municipal corporation is not taxable.

U. S. v. Railroad Co. 17 Wall. 322, 21 L. ed. 597 (1872), U. S. Supreme, Hunt, J.

Interest on a loan payable by a railroad to the city of Baltimore was not taxable.

Attorney General Hoar, 13 Ops. Atty. Gen. 67 (1869).

A tax levied on the average amount of deposits is collectible, although part of the deposits are state funds. The tax is on the bank and not on the state.

Neither railroads owned by a state, or the gross income thereof, or the profits accumulated therefrom, or dividends paid upon its bonds are subject to taxation under the Act of June 30, 1864.

Attorney General Stanbery, 12 Ops. Atty. Gen. 277 (1867).

Articles manufactured by convict labor in the penitentiaries of a state for the use of a state or on account of a state are not taxable.

Ibid.

So ruled, as regards the Detroit House of Correction, where all female prisoners other than those convicted of murder and all other convicts at the discretion of the proper officers might

be confined instead of in the state prison, and where Federal prisoners were confined.

Attorney General Browning, 12 Ops. Atty. Gen. 376 (1868).

Dividends accruing to the state of Massachusetts on stock owned by it in the Boston and Albany railroad were not taxable.

Attorney General Ackerman, 13 Ops. Atty. Gen. 439 (1871).

Acting Attorney General Browning, 12 Ops. Atty. Gen. 402, (1868), acc.

A *quasi*-public corporation, organized for the management of docks, was required to expend its income, after certain expenses of management, in reduction of the principal of its debt, by means of a sinking-fund. When the debt was paid, the taxes were to be reduced so as merely to cover expenses. Other payments were forbidden. *Held,* under an act taxing income before it should be paid to creditors or stockholders, that the surplus of income carried to the sinking-fund was taxable. A profit is a profit, irrespective of the mode of application.

Mersey Docks, etc., Board v. Lucas, L. R. 8 App. Cas. 891 (1893), House of Lords.

Lowrey v. Harbour Commissioners, 3 Times L. R. 516 (1887), Q. B. D., *acc.*

A *quasi*-public corporation, organized to supply a city with water, was empowered to levy water-rates on the citizens to an amount sufficient to pay expenses and one per cent. of all sums borrowed, and that percentage was to go into a sinking-fund. *Held,* that sums so paid into the sinking-fund were not taxable as profits. The corporation is a mere agent for the rate-payers, and they make no profit.

Glasgow, etc. Commrs, v. Inland Revenue, 2 Ct. Sess. (4th Ser.) Cas. 708 (1875)., Scot. Ct. Sess.

Sed quære, it appearing that the corporation was empowered to sell water upon special terms outside of the city, whether the surplus arising upon such a transaction would not be a profit?

Ibid.

A municipal corporation receiving tolls upon all coal landed on its beach or brought within its limits, which by a statute were to be applied on public works, *held,* taxable on the income so obtained.

Attorney General v. Black, L. R. 6 Exch. 308 (1871), Exch. Chamb. affirming *s. c.*, Ibid. p. 78 (1871), Ct. Ex.

Semble, otherwise if the tolls had fallen merely on the inhabitants and not on strangers.

Ibid.

Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

This is designed to protect the interests of the City of New York under its contracts for the construction of subways.

See Admiral Realty Co. v. City of New York, 206 N. Y. 110, 99 N. E. 241.

(b) Such income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property;

Above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale.—Act of August 28, 1894, § 32.

"Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy

and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided*, That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds."—Corporation Tax Law of August 5, 1909.

When taxes are imposed by a state on stockholders, and the corporation is authorized to deduct them from dividends, *held,* that the corporation could not deduct taxes so retained as expenses of its business.

Central National Bank v. U. S. 137 U. S. 355, 34 L. ed. 703, 11 Sup. Ct. Rep. 126 (1890), HARLAN, J., affirming U. S. v. Central National Bank, 24 Fed. 577 (1885), U. S. C. C. S. D. N. Y., WALLACE, J., which reversed s. c. 15 Fed. 222 (1883), U. S. D. C. S. D. N. Y. BROWN, J. And see s. c. 10 Fed. 612 (1882), U. S. D. C. S. D. N. Y., BROWN, J.

A company, whose business consisted in buying and selling land and rights of land, bought a piece of vacant ground for 898l. and after erecting houses upon it burdened each house with a fen duty: the fen duties in all amounted to 114l. per annum. The company then sold the fen duties for 3,135l., but retained the land and houses. The Inland Revenue claimed Income Tax on the difference between 898l. and 3,135l. as profit earned by the company: *Held,* that the claim could not be sustained, inasmuch as the price of 3,135l. could not have been obtained if the ground had remained vacant, but was partly due to the erection of houses by the company.

Furtado v. Cardonald Feuing Co. [1907], S. C. 36, 44 Scot. L. R. 66, Ct. of Sess.

A golf club, the members of which were entitled on payment of their subscriptions to play on the links, admitted, under the terms of its lease, visitors, who were non-members, to play on the links and to use the club-house, on payment of certain green fees fixed by the lessors. The annual expenditure incurred in the maintenance of the golf course alone exceeded the amounts of the green fees received from visitors. The commissioners for general purposes decided on appeal, that the club was chargeable under Sched. (D.) in respect of the green fees received from visitors, less such portion of the annual outlay in maintaining and keeping up the links and club-house, as the green fees bore to the entire annual income of the club or fund available for the maintenance and upkeep: —*Held,* that the club was carrying on an enterprise which was outside the scope of the ordinary functions of the club, and that any profits derived from the fees in question were chargeable under Sched. (D.); and, further, that the method adopted by

the commissioners of ascertaining the amount of the profits, was erroneous, as being an arbitrary method having no necessary application to the facts, and therefore, in default of agreement, the case must be referred back to the commissioners to ascertain the amount of the true profits.

Carlisle and Silloth Golf Club v. Smith, [1912] 2 K. B. 177, 81 L. J. K. B. N. S. 581, 106 L. T. N. S. 573, 6 Tax. Cas. 48.

A mortgage company, whose business consisted in lending money on the security of land in Texas and elsewhere, raised money by issuing debentures, and lent it at higher rates of interest:—*Held,* that the cost of raising the debentures, such as commission paid to brokers, and other expenses, could not be deducted as trade expenses.

Texas Land and Mortgage Co. v. Holtham (1894) 63 L. J. Q. B. N. S. 496, 10 Times L. R. 337, 3 Tax Cas. 255.

A company borrowed money to be employed in the business, and undertook, on the repayment of any capital sum, to pay to the lenders, along therewith, a bonus of 10 per cent:—*Held,* that the bonus could not be claimed as a deduction.

Arizona Copper Co. v. Smiles (1891), 29 Scot. L. R. 134, 3 Tax Cas. 149.

The business of selling annuities is to be taxed upon the same principle as any other commercial concern, such as the selling of coals or corn, where the cost of the thing sold to the trader is one of the expenses incident to carrying on the trade. Disbursements made wholly and exclusively for the purposes of a trade in annuities must be deducted in estimating the assessable "profits," as a grocer has to deduct the price paid by him for the tea or sugar which he retails. The decision of the House of Lords may be regarded as having settled the following points that—*Held,* that (1) There is no distinction between the words "profits" and "gains." (2) "The amount of the profits" means the same as "the balance of the profits." (3) "Payable out of profits" means "payable out of profits brought into charge."

Per Lord WATSON [1892] A. C. p. 320: "In order to bring annuities or other annual payments within the scope of the rule, they must, in my opinion, either be directly charged upon profits, or be in themselves of such a character that they form a proper charge upon profits. . . . An annuity to the widow

of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

Per Lord HERSCHELL (p. 324): "When read in connection with § 102, the rule clearly relates only to annuities payable out of profits and gains 'brought into charge' by virtue of the Act. . . . I think the 4th rule was primarily designed to meet such a case as that in which a trader had contracted to make an annual payment out of his profits, as, for example, when he had agreed to make such a payment to a former partner, or to a person who had made a loan on the terms of receiving such payment. But for the rule it might plausibly have been contended that in such a case a trader was only to return as his profits what remained after making such payment."

Gresham Life Assurance Society v. Styles [1892] A. C. 309, 62 L. J. Q. B. N. S. 41, 67 L. J. N. S. 479, 41 Week. Rep. 270.

Under the Corporation Income Tax Law of 1909, *held,* that a life insurance company might deduct expenditures for ordinary renewals of office furniture, and uniforms of attendants, rugs, awnings, small hardware, door mats, window shades, lamps, meters, electrical equipment, and other articles of a similar character, exceeding in one year $4,000, which were no greater than the previous yearly average of similar expenses and did not exceed five per cent. of the similar articles owned by the plaintiff.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 216.

Held that in ascertaining the profits of the business of fire insurance, a deduction claimed in respect of "unearned premiums," could not be made.

Imperial Fire Insurance Co. v. Wilson (1876), 35 L. T. N. S. 271, 1 Tax Cas. 71.

Held, that, as fire insurance policies were contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, might be fairly taken as profits and gains of the company, without taking into account,

or making any allowance for, the balance of annual risks unexpired at the end of the financial year of the company.

Scottish Union and National Assurance Co. v. Smiles (1889), 16 R. 461, 26 Scotch. L. R. 330, 2 Tax Cas. 551.

The accounts of the company, on which the assessment was based, showed that the unexpired risks were not taken into account for the purpose of ascertaining the amount of profits divisible among the company's shareholders, and the sums in respect of such risks were carried to general reserve after declaring the dividends out of the profits. It was held, by the House of Lords, that as it was not shown that the method of assessing, without deduction in respect of unexpired risks, was unfair, having regard to the facts of the particular case, the deduction claimed was inadmissible.

In General Accident Assurance Corporation v. M'Gowan [1908] A. C. 207, 77 L. J. P. C. N. S. 38, 98 L. T. N. S. 734, 5 Tax Cas. 308, an insurance company carried on the business of fire insurance, and issued policies for periods of twelve months and longer periods, the premiums being payable in advance. The risk on the policies ran from the dates therein mentioned. At the end of the financial year, a considerable number of policies were still running, under which the company were under liability to pay in the event of any loss. The company, since 1888, had carried forward annually in their accounts 40 per cent. of the yearly premium receipts as a reserve, in order to bring about the correct incidence, as between year and year, of the premium income which had to answer to accidental incidence of fire losses, and on the balance of which, over or under the losses and charges for the year, the profit or loss attaching to the business depended. The provision thus made of 40 per cent. amounted on December 31st, 1901, to £466,138, and rose, during the three years on which the assessment was based, to £522,472. The increase in the reserve then amounted to £56,334, and consequently affected the return for the year of assessment by one-third, or £18,778. A deduction was claimed in respect of this sum. The General Commissioners of Income Tax, on the appeal by the company, were of opinion that the latter were entitled to carry a percentage of fire premiums received in one year, forward to reserve in respect of unearned premiums, which did not form part of the profits for the year,

and they found, in the case of the company, that 40 per cent. was a reasonable and proper allowance, and reduced the assessment accordingly:—*Held,* by the House of Lords, that having regard to the finding of fact by the commissioners, the sum in question was properly deductible by the company, and that there was no rule of law by which to frame an estimate of the balance of profits and gains after allowing for the unexpired risks when the accounts were made up. It was a question of facts and figures in each case, whether the assessment was fair both to the Crown and to the subject (General Accident Assurance Corporation v. M'Gowan, discussed and explained). Per Lord LOREBURN, L. C. [1912] A. C. p. 454: "I am equally anxious that your lordships should not be supposed to have laid down that the method applied by the commissioners in the present case has any universal application. If the Crown wishes in any future instance to dispute it, the Crown can do so by evidence, and it is not to be presumed that it is either right or wrong. A rule of thumb may be very desirable, but cannot be substituted for the only rule of law that I know of, namely, that the true gains are to be ascertained as nearly as it can be done."

Sun Insurance Office v. Clark, [1912] A. C. 443, 81 L. J. K. B. N. S. 488, 106 L. T. N. S. 438.

Held that where not authorized by the articles of association, the payment of the income tax on director's fees out of the company's funds, was an illegal payment.

Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148, 75 L. J. Ch. N. S. 261, 94 L. T. N. S. 398, 54 Week. Rep. 359.

Traveling expenses of directors from their residences to the office of their company, were held to be inadmissible deductions.

Revell v. Directors of Elworthy Brothers & Co. (1890), 3 Tax Cas. 12.

A company undertook to construct a railway in Brazil under a Government guarantee of 7 per cent. It raised capital by debentures at 5½ per cent. and devoted the 7 per cent. to payment of debenture interest, and to the formation of a sinking fund to pay off the debentures:—*Held,* that the whole of the sum paid under the guarantee during construction, was liable

as interest, without deduction in respect of the amount applied to the sinking fund.

Blake v. Imperial Brazilian Rail Co. (1884), 1 Times L. R. 68, 2 Tax Cas. 58. See also incidentally, City of London Contract Corporation v. Styles (1887), 4 Times L. R. 51, 2 Tax Cas. 239.

A company constructed a railway in Hyderabad. The Nizam's Government guaranteed an annuity for twenty years of 5 per cent on the issued share and debenture capital, to be applied in paying interest on such capital, and in forming a sinking fund for the redemption of the debentures, subject to provisions for repayment of the sums paid, with interest, out of profits earned.—*Held,* that the whole annuity was chargeable with duty, without deduction, for the amount applied to the sinking fund.

Nizam's State Rail Co. v. Wyatt (1890), L. R. 24 Q. B. Div. 548, 59 L. J. Q. B. N. S. 430, 62 L. T. N. S. 765, 2 Tax Cas. 584.

second, all losses actually sustained within the year and not compensated by insurance or otherwise,

In the case of an individual, fourth, losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless; fifth, debts due the taxpayer actually ascertained to be worthless and charged off within the year. B. supra. See citations thereunder. Losses—Act of August 28, 1894, § 32.

A new association formed by the incorporation of a partnership, was held to succeed to the concern within the meaning of this 4th rule, and that the extraordinary depression in the iron and coal trades, whereby the company was unable to sell either so large a quantity of coals, or to obtain so good a price as formerly, was a "specific cause;" and further, that the 6th case of Sched. (D.), applied, and under it the computation should be made on the amount of the full value of the profits and gains received annually, *i. e.*, for the current year.

Ryhope Coal Co. v. Foyer (1881), L. R. 7 Q. B. Div. 485, 45 L. T. N. S. 404, 30 Week. Rep. 87, 1 Tax. Cas. 343.

A railway company discontinued certain steamships which, in the course of the business, had been running at a loss. In

estimating their profits for income tax on the basis of the income of the previous year (r. 3 of No. III. of Sched. (A.)), the company claimed to deduct the loss on the steamboats during that year:—*Held*, that they were entitled to do so; the assessment must be based on the net profits of the whole undertaking for the year preceding the year of assessment, the loss on the steamships being taken into account, as running steamships was a part of the undertaking of the company.

Highland Rail. Co. v. Special Commissioners (1885), 13 R. 199, 23 Scot. L. R. 116, 2 Tax Cas. 151.

The business, together with a distillery, of a firm of blenders, wine merchants, and exporters, was acquired and worked by a limited company. The firm had not commenced to work the distillery. At the appeal, the General Commissioners were of opinion, that the concern of the company was not a succession to that of the firm, within the 4th rule. The court decided that as the commissioners had held that there was not a sufficient or general identity between the two businesses, that question was one of fact and not of law, and there was nothing to show that the commissioners had arrived at a wrong legal result.

Alexander Ferguson & Co. v. Aikin (1898), 4 Tax Cas. 36.

A "tramp" steamer was sold, but no books, accounts, or list of customers were sold with it:—*Held*, that the new owners were not entitled to be assessed as successors in the business of the previous owners. The sale was not the sale of a business, but of "a corporeal moveable, which happened to be a ship."

Watson Brothers v. Lothian (1902), 4 F. 795, 39 Scot. L. R. 604, 4 Tax Cas. 441.

See also Farrell v. Sunderland Steamship Co. (1903), 88 L. T. N. S. 741, 4 Tax Cas. 605, set out under r. 3, ante.

The defendant company purchased the business and premises, etc., of a local bank, at Wolverhampton. They then for the first time, opened a branch at Wolverhampton on the premises so purchased, and there carried on business with the manager and staff previously employed by the local bank. The profits and expenses of the Wolverhampton business were merged in those of the defendant company as a whole, and there were no means of ascertaining what proportion, if any, of increase or decrease of the profits of the company had arisen from the

business purchased. *Held,* by the Court of Appeal, that there had been a succession within this rule.

Bell v. National Provincial Bank of England [1904] 1 K. B. 149, 73 L. J. K. B. N. S. 142, 90 L. T. N. S. 2, 52 Week. Rep. 406, 5 Tax Cas. 1.

A tramway company was incorporated under a local Act. At a later date, the undertaking of the company was transferred to a new company, which also acquired at the same date the business of an omnibus company, and carried on the two businesses simultaneously for a considerable period. Subsequently, the local authority purchased the tramway undertaking under a statutory power of compulsory purchase, and proceeded to extend its area, and to substitute electric trams for the existing horse-drawn vehicles: *Held,* that the local authority were successors of the company in respect of their tramway business, and had not set up or commenced a new business by their reconstruction, and were therefore entitled to be assessed on the average of the profits of the three preceding years. Per Bray, J., 95 L. T. N. S. p. 839: "Railway companies are always spending capital and extending their railways, and some of them have substituted electrical power for steam, but it could not be suggested that by doing this they were commencing or setting up a new business. It so happens here that the extension and modification was very great, and that it occurred just at the time when the respondents had bought the original undertaking, but I do not think this alters the case. There seems no reason why the revenue should be benefited by the accident of transfer at the time."

Stockham v. Wallasey Urban District Council (1906) 95 L. T. N. S. 834, 71 J. P. 244.

including a reasonable allowance for depreciation by use, wear and tear of property, if any;

In computing the net income of individuals there is deducted" a reasonable allowance for exhaustion, wear and tear of property arising out of its use or employment in the business." B. supra.

A reasonable allowance for depreciation of property, if any.—Corporation Tax Law of August 5, 1909.

Under such a provision, a mining corporation engaged in extracting ore from its mines is entitled to an allowance for depre-

ciation equal to the value in place of the ore extracted and disposed of during the year.

Under the Act of June 30, 1864, as amended by the Act of July 13, 1866, the tax was upon profits, not earnings, "carried to the account of any fund or used for construction." *So held,* where against sums carried to the account of some fund or used for construction, the corporation claimed to offset items 1, for loss and depreciation of book accounts; 2, depreciation in the value of bonds; 3, depreciation in the value of "the street connection track;" 4, losses on a purchase of capital stock, which offsets were allowed.

Little Miami, etc., R. R. v. U. S., 108 U. S. 277, 27 L. ed. 724, 2 Sup. Ct. Rep. 627 (1882), WAITE, C. J., reversing U. S. v. Little Miami, etc., R. R. 1 Fed. 700 (1880), U. S. Cir. Ct. S. Dist. Oh., SWING, J.

Estimated depreciation of assets may be included in losses.

Little Miami, etc., R. R. v. U. S. 108 U. S. 277(27 L. ed. 724, 3 Sup. Ct. Rep. 627 (1883), WAITE, C. J., reversing U. S. v. Little Miami, etc., R. R. 1 Fed. 700 (1880), U. S. Cir. Ct., S. Dist. Oh., SWING, J. (It does not clearly appear in the report in 108 U. S. 277 that the depreciation was merely estimated, but that fact is clearly stated in 1 Fed. 700, at p. 702, and would seem to be the *ratio decidendi.* See also the report of the case at circuit in 26 Int. Rev. Rec. 101.)

The tax accrues upon all sums "made or added * * * to surplus or contingent funds, at the moment of addition, and is not diminished by a subsequent loss of the whole or a part of the fund," *e. g.,* by embezzlement.

Solicitor General Phillips, 14 Ops. Atty. Gen. 643 (1874).

Sums carried to the account of a repair fund come within the clause as to profits carried to the account of any fund or used for construction and cannot be deducted.

Ruling, 2 Int. Rev. Rec. 100.

A sum set apart for depreciation, aside from repairs, is an addition to capital out of profits and therefore taxable under the English Act.

Forder v. Handyside, L. R. 1 Exch. Div. 233 (1876). But see Dowell on Income Tax, 7th ed. 280.

Depreciation of the value of machinery due to removal of business is not deductible. It is loss of capital.

Smith v. Westinghouse Brake Co. 2 Tax Cas. 357 (as stated in Dowell on Income Tax, 7th ed. p. 117, n.).

A railway company were allowed as a deduction a sum expended in repairs or renewals of rolling stock, and which has been sufficient to keep their rolling stock in good working condition and repair. They claimed a further deduction for wear and tear of newly added stock, which had not required any repair or renewal:—*Held,* that the deduction for wear and tear to be made under the above section was a deduction for diminished value as a means of earning income, and not as a saleable subject, and that inasmuch as the stock in question was undiminished in value for the purpose of earning income, no further deduction could be allowed. *Query,* whether the words "as they may think just and reasonable" do not exclude review. Per Lord GIFFORD: "The company cannot get deduction for deterioration twice over, first by deducting the actual expense of repair and renewal, and then by deducting an additional estimate for the same thing."

Caledonian Rail. Co. v. Banks (1880), 8 R. 89, 18 Scot. L. R. 85, 1 Tax Cas. 487.

A steamship company were held not to be entitled to an allowance in respect of depreciation of their ship by (a) loss of earning power owing to the ship having become more or less obsolete, or (b) diminution in market value apart from that caused by wear and tear.

Burnley Steamship Co. v. Aikin (1894), 21 R. 965, 31 Scot. L. R. 803, 3 Tax Cas. 275.

A company owned a fleet of passenger and cargo steamers. The commissioners allowed a deduction of 5½ per cent. from the written-down value of the whole fleet in the company's books, as representing the diminished value of the ships by reason of wear and tear during the year of assessment. The company claimed a reduction of the assessment, on the ground of overcharge, consequent upon insufficient allowance for depreciation:—*Held,* that the appeal must be refused.

Leith, Hull, and Hamburg Steam Packet Co. v. Bain (1897), 3 Tax Cas. 560.

The commissioners of income tax are not bound to take an average of the depreciation during the three preceding years,

but may adopt as their estimate the amount of the depreciation during the year immediately preceding that of assessments.

Cunard Steamship Co. v. Coulson [1899] 1 Q. B. 865, 68 L. J. Q. B. N. S. 554, 80 L. T. N. S. 326, 4 Tax Cas. 63.

A company owned a fleet of passenger and cargo steamers. In fixing the deduction for diminished value through wear and tear, the commissioners took into account that the sum annually allowed might be so invested as to produce interest at 3 per cent. per annum:—*Held,* that the commissioners were not entitled to make any deduction from the sum representing the wear and tear on account of any interest that might be earned on the sum allowed.

Leith, Hull, and Hamburg Steam Packet Co. v. Musgrave (1899), 1 F. 1117, 36 Scot. L. R. 745, 4 Tax Cas. 80.

A company owning a fleet of ships, claimed to be allowed a deduction of 5 per cent. on the original cost of the ships, as representing the diminished value by reason of wear and tear during the year. The commissioners found that the average duration of the service of ships in the fleet was seventeen years, though the average duration of life was twenty-eight years; and that an allowance at the rate of 6 per cent. on the diminished value of the fleet for the year of assessment, arrived at by taking the original cost of each vessel and writing it down year by year at the rate of 6 per cent. on the diminishing value, was a sufficient allowance to cover the diminished value by reason of wear and tear during the year:—*Held,* by the Queen's Bench Division, that the commissioners had dealt with all that was property before them, and that the questions were substantially questions of fact. On Appeal to the Court of Appeal, and upon a further statement made by the commissioners that interest was not taken into consideration, etc., the appeal was dismissed upon the ground that no question of law arose.

Peninsular and Oriental Steam Navigation Co. v. Leslie (1900), 79 L. T. N. S. 118, 82 L. T. N. S. 137, 4 Tax Cas. 177. This case was followed in British India Steam Navigation Co. v. Leslie (1900), 17 Times L. R. 104, 4 Tax Cas. 257, in which the facts were similar.

A firm owned a fleet of ships of the average age of thirty-one years. Prior to the year of assessment there had been allowed

yearly an amount by way of deduction for diminished value by reason of wear and tear, such sums amounting in the aggregate to not less than 96 per cent. of the original cost. The breaking-up value in the year of assessment was considerably more than 4 per cent. of the original cost:—*Held,* that the commissioners were bound to consider to what extent there had been a diminution of value during the year of assessment, and to decide what was a just and reasonable allowance in respect thereof, and that they were not entitled to take into account the allowances made in previous years, and further that a hulk, which had formerly been a sailing ship, and was used as a floating warehouse for coal, was "plant" within this section. Per WALTON, J., [1906] 1 K. B., p. 316: "The case might be different if there were any evidence of an agreement between the appellants and the commissioners that the allowance for depreciation should be calculated upon the basis of its being an allowance which would at the end of a period of years, taking into account the breaking-up value of the vessels, fully replace the appellant's capital, and that after that date no further allowances should be made; but there is no evidence to that effect, and no such agreement is relied upon."

John Hall, Junior & Co. v. Rickman, [1906] 1 K. B. 311, 75 L. J. K. B. N. S. 178, 94 L. T. N. S. 224, 54 Week. Rep. 380.

The London County Council purchased certain tramways from different companies. These tramways were formerly worked by horse power, but the council proceeded to reconstruct them in order to work them by electric traction. For the purpose of assessing the profits of these tramways for income tax, the practice had been adopted of deducting the amounts actually expended on repairs and renewals in each year, in lieu of estimating the deduction to be made for depreciation under the provisions of § 12 of the Customs and Inland Revenue Act, 1878. By March 31st, 1904, thirty-eight miles of track had been reconstructed, of which five miles were worn out, and would have required reconstruction for horse traction. The remaining thirty-three miles were not worn out, but their life was much below the average life of a rail. A certain number of the horse traction cars, although not worn out, had been discarded, and others substituted. In the assessment to income tax of the

profits for the year ending April 5th, 1904, the Commissioners of Income Tax followed the practice previously adopted, but refused to allow any deduction in respect of the thirty-three miles of line referred to, or in respect of the cars which were not worn out:—*Held,* that no question of law was raised in the case, and further, that the practice adopted was not applicable, and that the appellants had no cause of complaint as they had received all that they were entitled to under the practice.

London County Council v. Edwards (1909), 100 L. T. N. S. 444, 73 J. P. N. S. 213, 25 Times L. R. 319, 5 Tax Cas. 383.

and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made;

A coalowner, who also owned the estate of which the mine formed part, in ascertaining the amount of his profits, claimed a deduction in respect of capital lost through partial exhaustion of the mine:—*Held,* that the deduction was not allowable.

Miller v. Fairie (1878), 16 Scot. L. R. 189.

A mine owner was held, by the House of Lords, not to be entitled, in ascertaining the amount of his profits for assessment, to deduct a sum as representing the amount of capital expended in making bores and sinking pits, which had been exhausted by the year's working (Knowles v. McAdam (1877), L. R. 3 Exch. Div. 23, 47 L. J. Exch. N. S. 139, 37 L. T. N. S. 795, 26 Week. Rep. 114, held wrongly decided). Per Earl Cairns (1881), L. R. 6 App. Cas. p. 324: "I am not prepared to say that under the words of 5 & 6 Vict. chap. 35, a mine owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit, by means of which pit the minerals are gotten which are the source of profit for the year in which the pit was sunk. I desire to reserve my opinion on that point until the question arises. But in the present case the question is altogether different. It is, as now explained, can a mine-owner write off and deduct from the gross earnings of his mine in a particular year, a sum to represent that year's depreciation of all the pits in the mines, whenever sunk? I am clearly of opinion that this cannot be done." Per Lord Pen-

ZANCE (p. 326): "The words 'profits received therefrom,' are here introduced to define the annual value of the thing which is to be taxed, which is the 'mine,' and it could not, I think, be intended that for the purpose of calculating the 'annual value' of a 'mine,' the original cost of the 'mine' itself, or any part of it, should be first deducted. On the contrary, the words 'profits received therefrom,' in this connection, mean, I think, the entire profit derived from the 'mine,' deducting the cost of working it, but not deducting the cost of making it." Per Lord BLACKBURN (p. 335): "It was said by Lord CAIRNS in Gowan v. Christie L. R. 2 H. L. Sc. App. Cas. p. 284, 8 Mor. Min. Rep. 688, that a lease of mines 'is not in reality a lease at all in the sense in which we speak of an agricultural lease. There is no fruit; that is to say, there is no sowing and reaping in the ordinary sense of the term, and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of the land.' I think this is a perfectly accurate statement. But the argument that no income tax should be imposed on what is, perhaps not quite accurately, called rent reserved on a mineral lease, because it is a payment by instalments of the price of minerals forming part of the land, any more than on the price paid down in one sum for the out and out purchase of the minerals forming part of the land, is, I think, untenable." (p. 339): "I do not wish to lay down any general proposition, either that money expended in sinking pits can never be in the nature of expenses incurred within the five years in working the coal so as to be properly taken into account in estimating the profits made in that period; or to say what, if any, the circumstances are under which it may be done. That, I think, had better be left to be determined when the case arises."

Coltness Iron Co. v. Black (1881), L. R. 6 App. Cas. 315, 51 L. J. Q. B. N. S. 626, 45 L. T. N. S. 145, 29 Week. Rep. 717, 1 Tax Cas. 287.

See also incidentally, the following decision under Sched. (D.). An English company owning lands in Chili, on which they manufactured nitrates and iodine by working up certain deposits found on the land, claimed to be entitled, in estimating their yearly profits and gains, to make deductions in respect of the exhaustion of the deposits:—*Held,* by the House of Lords,

that they were not entitled to do so, the land being "capital" within the Income Tax Act, 1842.

Alianza Co. v. Bell, [1906] A. C. 18, 75 L. J. K. B. N. S. 44, 93 L. T. N. S. 705, 54 Week. Rep. 413, 5 Tax Cas. 172.

In the case of cost-book mines under the Stannaries Acts, where a call had been made upon the shareholders for the purpose of sinking a new shaft, the commissioners for general purposes had allowed a deduction in respect thereof, being of opinion, that in a cost-book mine there was no such thing as capital, and that there could be no profit in working such a mine until every expenditure had been met:—*Held,* that the commissioners were wrong, and that the question whether the expenditure was capital or not was one of fact.

Morant v. Wheal Grenville Mining Co. (1894), 71 L. T. N. S. 758, 3 Tax Cas. 298.

A company sank a shaft of a tin mine about fifty fathoms further down, which extension, together with the old portion, was used as a ventilating shaft, and as a centre from which levels and roads could be cut for the purpose of discovering lodes or pockets of ore at a level below those portions of the mine which had been wholly or partially exhausted, and also for the purpose of raising and lowering men and materials, but not for the purpose of winning ore from a vertical lode. The sinking operations occupied about two years and cost £2,940. The commissioners allowed the deduction of the said sum, being of opinion that the expenditure was proper working cost, and could not properly be dealt with as capital:—*Held,* that there was no evidence to support the finding of fact by the commissioners, and further that the expenditure was capital expenditure and not working expenditure, and that the company were in effect opening up a new mine and accordingly the deduction was not permissible.

Bonner v. Bassett Mines, Limited, Law Times, Dec. 21st, 1912, p. 179.

Recouping Dead Rent from Royalties.—A mine was subject to a minimum dead rent. When the royalties exceeded the dead rent, the surplus might be retained until the company was recouped the amount by which in former years the dead rent had exceeded the royalties:—*Held,* that in estimating the profits of

the mine, no deduction was allowable in respect of such surplus royalties so retained, although in previous years the dead rent had been paid and assessed when the mine had not commenced working.

Broughton and Plas Power Coal Co. v. Kirkpatrick (1884), L. R. 14 Q. B. Div. 491, 54 L. J. Q. B. N. S. 268, 33 Week. Rep. 278; 2 Tax Cas. 69.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:

In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds. G (c) infra.

The net profits or income of all corporations, companies, or associations shall include the amounts * * * carried to the account of any fund.—Act of August 28, 1894, § 31.

In the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds.—Act of August 5, 1909.

Under the Act of 1909, *held,* that a deduction might be made of the additions to the reserve fund to secure payment upon supplementary policy contracts.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 212, explained supra.

Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual

policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

All corporations, joint-stock companies or associations and insurance companies * * * shall render a true and accurate return * * * setting forth: (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:

Provided, further, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof; and in case of a corporation joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves;

Provided, further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof; and life insurance companies shall not include as income in any year such portion of any actual premiums received from any individual policyholder,

or treated as an abatement of premium of such individual policyholder, within such year;—G. (c) infra.

In the case of insurance companies the sums other than dividends paid within the year on policy or annuity contracts.—Act of August 5, 1909.

See Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199, 212, and other cases cited supra, pp. 459–465.

third, the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: Provided further, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;

All corporations, joint-stock companies or associations and insurance companies * * * shall render a true and accurate return * * * setting forth * * * (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under

the authority of the United States and separately the amount so paid by it for taxes imposed by the Government or any foreign country.—G. (c) infra.

(Third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits.—Act of August 5, 1909.

A deduction cannot be allowed for interest paid from which the company failed to deduct the tax at the time of payment as required by the statute. City of London Contract Co. v. Styles, 4 Times L. R. 51 (1887), Ct. App. affirming s c. 3 Times L. R. 512 (1887).

fourth, all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country:

In computing net income for the purpose of the normal tax there shall be allowed as deductions: * * * third all National, State, county, school and municipal taxes paid within the year, not including those assessed against local benefits.—B. supra.

All corporations, joint-stock companies or associations and insurance companies * * * shall render a true and accurate return * * * setting forth * * * (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the government of any foreign country.—G. (c) infra.

That all state, county, municipal, and town taxes paid by corporations, companies or associations, shall be included in the operating and business expenses of such corporations, companies, or associations.—Act of August 28, 1894, § 32.

Third. There shall be deducted from the gross amount of the net income of such corporation, joint-stock company or association, or insurance company * * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein.—Act of August 5, 1909.

Provided, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States,

For authorities upon what is income from business transacted and capital within the United States, see *supra*, pp. 339–343, 470–481.

first, all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property;

second, all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made;

All loans actually sustained by it within the year in business conducted by it within the United States or its Territories, Alaska or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property if any.—Act of August 5, 1909.

For authorities on depreciation and mines see pp. 386–388, 499–507, supra.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year

As to domestic insurance companies, see supra in G (b).

In the case of insurance companies the sums other than dividends, paid

within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to its reserve funds.—Act of August 5, 1909.

For authorities, see pp. 459–466, supra.

third, the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed;

Or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States;—Corporation Tax Act of August 5, 1909.

fourth, all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia.

[In case of a domestic corporation,] "all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country."—G (b) supra.

[The return must state in the case of a domestic or foreign corporation:] "(seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country."—G (c) infra.

In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) the tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending De-

cember thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year:

The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided*, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for.—D supra.

Provided further, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed.

Provided, That every corporation, joint-stock company or association, and insurance company computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days aftr the date upon which it is required to file its list or return of income for assessment.—Subsection G (c) infra.

All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed,

computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter,

It shall be the duty of any person, partnership, firm, association, or corporation * * * in case of income tax on or before the first Monday of March in each year * * to make a list or return.—U. S. R. § 3173 as amended by this act, infra.

Shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five.—Act of August 28, 1894, § 35.

On or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter.—Act of August 5, 1909.

and all corporations, joint stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided,

Provided further: That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year * * *: and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located, at any time not less than thirty days prior to the date upon which its annual return shall be filed.—supra.

shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter,

or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States,

Or in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States. —Act of August 5, 1909.

in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe,

See the Rules and Regulations, infra.

In such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe,—Act of August 5, 1909.

shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer,

A full return, verified by oath or affirmation, in such form as Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return.—Act of August 28, 1894, § 35.

A true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer.—Act of Aug. 5, 1909.

to the collector of Internal Revenue for the district in which it has its principal place of business,

To the collector of its collection district.—Act of August 28, 1894, § 35.

To the Collector of Internal Revenue for the district in which such cor-

poration, joint stock company or association, or insurance company, has its principal place of business.—Act of August 5, 1909.

setting forth (first) the total amount of its paid up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources,

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.—Act of August 28, 1894, § 35.

Setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint-stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received during such year from all sources. * * * Also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by this section.—Act of August 5, 1909.

and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States,

And if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia.—Act of August 5, 1909. See pp. 470–481, supra.

fourth, the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year,

Second. The expenses of such corporation, company, or association exclusive of interest, annuities, and dividends.—Act of August 28, 1894.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.—Act of August 28, 1894.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.—Act of August 28, 1894.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address of each of such persons and the amount paid to each.—Act of August 28, 1894.

(Fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the

business and properties of such corporation, joint-stock company or association, or insurance company, within the year.—Act of August 5, 1909.

stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property,

Stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property.—Act of August 5, 1909. See pp. 470–481, supra.

and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States;

And if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia.—Act of August 5, 1909. See pp. 470–481, supra.

fifth, the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise.

(Fifth) the total amount of all losses actually sustained within the year and not compensated by insurance or otherwise.—Act of August 5, 1909.

stating separately any amounts allowed for depreciation of property,

Stating separately any amounts allowed for depreciation of property.—Act of August 5, 1909. See pp. 470–481, supra.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: provided further, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: provided further, that mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association,

or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Similar language is found in subsection g (b) supra, concerning the ascertainment of the net income of domestic and foreign insurance companies, with the additional clause in the case of assessment insurance companies, whether domestic or foreign, that the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

And in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any required by law to be made within the year to reserve fund.—Act of August 5, 1909.

sixth, the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum

of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from the business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States;

Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, * * * (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided*, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business: *Provided further*, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan, or trust company; * * *

(Sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its

paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States.—Act of August 5, 1909.

seventh, the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the government of any foreign country;

"Such net income shall be ascertained by deducting * * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: *Provided,* That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting * * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia."—Subsection G (b).

Provided, That in stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States * * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia.—Subsection G (b) supra.

(Seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein.—Act of August 5, 1909.

eighth, the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.—Act of August 28, 1894.

(Eighth) the net income of such corporation, joint-stock company or association, or insurance company after making the deductions in this section authorized.—Act of August 5, 1909.

All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

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All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year,

All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year.—Act of August 5, 1909.

and said assessment shall be paid on or before the thirtieth day of June:

That said tax shall be paid on or before the first day of July in each year.—Act of August 28, 1894, § 32.

Said assessments shall be paid on or before the thirtieth day of June.—Act of August 5, 1909.

Provided, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment;

That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment.—Subdivision C. supra.

except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section

See Subsection E, supra.

That it shall be the duty of every corporation, company, or association doing business for profit to keep full, regular and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief. He shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made;

and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income, and then add fifty per centum hereto, which said assessment so made shall then be the lawful assessment of such income.—Act of August 28, 1894, § 36.

or by existing law,

See U. S. Rev. Stat. §§ 3173, 3176 (U. S. Comp. Stat. 1901, pp. 2065, 2068).

and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

And all sums due and unpaid that day shall draw interest thereafter at the rate of six per centum per annum.—Act of Aug. 5, 1861, § 51.

And to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and [or] insolvent persons.—Act of July 1, 1862, § 92.

And to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and [or] insolvent persons.—Act of July 1, 1862, § 92.

And to any sum or sums annually due and unpaid after the thirtiet[h] of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty.—Act of March 3, 1865, § 1.

And to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the account of duties unpaid, as a penalty, except from the estates of deceased or insolvent persons.—Act of July 13, 1866, § 1.

And to any sum or sums annually due and unpaid after the thirtieth day of April, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid and interest at the rate of one

per centum per month upon said tax from the time the same became due, as a penalty, except from the estates of deceased, insane or insolvent persons.—Act of March 2, 1867, § 13.

And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand thereof by the collector there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estate of deceased, insane, or insolvent persons.—Act of July 14, 1870, § 10.

And to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month upon said tax from the time the same becomes due, except from the estates of deceased, insane, or insolvent persons.—Act of August 28, 1894, § 30.

Semble, that upon presentation of the oath permitted by § 93 of the Act of July 1, 1862, the collector had no discretion but to strike off the increase from the assessment, and

Semble, that mandamus would lie to compel him so to strike it off.

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. Cir. Ct. S. Dist. N. Y. Hall, J.

In a suit in equity to recover the amount of a tax imposed by a statute with interest at the rate of twelve per cent. until paid, the defendant admitted part of the tax to be due and paid so much of the tax with twelve per cent interest into court. *Held,* the sum so paid in being greater than the interest then accrued on the whole tax, which the plaintiff alleged to be due, that it should be applied, in accordance with the defendant's intention, to the principal and interest which the defendant admitted to be due, and further, that on the remainder of the tax decreed to be due interest should be computed at the rate of twelve per cent. until the date of the decree, and after that at the rate of only six per cent.

Massachusetts v. Western Union Telegraph Co. 141 U. S. 40, 35 L. ed. 628, 11 Sup. Ct. Rep. 889 (1890), Gray, J.

By mutual mistake of collector and taxpayer, the basis of the tax was underestimated and the tax underpaid. In a suit to

recover the balance due, *held,* that interest should not be allowed until demand.

Second, etc. Street R. R. v. City of Philadelphia, 51 Pa. 465 (1866).

Interest cannot be allowed upon taxes until they are fixed by an assessment or charge by the taxing officer and notice thereof to the taxpayers.

Ibid.

Interest was not allowed to the Government, where the refusal to pay taxes was induced by inconsistent department rulings, and where another suit for the statutory penalty was pending.

U. S. v. Dollar Savings Bank, 15 Int. Rev. Rec. 193, Fed. Cas. No. 14,979 (1871), U. S. Cir. Ct. E. Dist. Pa. McKennan, J.

The demand, under the Act of June 30, 1864, must be a demand for payment, not merely a demand for a return as to property, and it must also be a demand for the specific amount to be paid.

U. S. v. Pacific Railroad, 4 Dill. 71, Fed. Cas. No. 15,984 (1877), U. S. Cir. Ct. E. Dist. Mo. Miller, J.

The state taxing officers having for a series of years collected taxes of the defendant at a certain rate, *held* that the state was estopped from collecting further taxes for the same period.

Commonwealth v. Pennsylvania Co. 145 Pa. 266, 23 Atl. 549 (1891).

Interest should be collected on taxes the payment of which was withheld during appeal; but the penalty should be exacted only if the taxes are unpaid ten days after notice of rejection of claim.

Ruling, 10 Int. Rev. Rec. 57.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order of the president, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, That the proper officers of any State imposing a general income tax may upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing

the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

The rules for the collection of internal revenue provide: "All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a State court, whether in answer to subpoenas *duces tecum* or otherwise. Whenever such subpoenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. The information contained in the records relating to special tax payers in the collector's office is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records or of any copies thereof for use against the special tax payers in cases not arising under the laws of the United States. The giving out of such records or any copies thereof by a collector in such cases is held to be contrary to public policy and not to be permitted. As to any other records than those relating to special tax payers, collectors are also forbidden to furnish them or any copies thereof at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in rule X of the rules and regulations of the Treasury Department, namely: In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to care-

fully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which make it necessary to decline, in the interest of the public service, to furnish such a copy."

This rule was authorized by the general authority conferred upon the Secretary of the Treasury by the Revised Statutes.

U. S. Rev. Stat. Sec. 161 (U. S. Comp. Stat. 1901, p. 80).

Boske v. Comingore, 177 U. S. 459, 460, 461, 44 L. ed. 846, 847, 20 Sup. Ct. Rep. 701.

See Foster's Fed. Pr. 5th ed. § 339.

And a revenue officer, who has been punished by a State court for contempt in refusing to produce copies of reports made to him by distillers, or of other records, will be released upon a writ of *habeas corpus* by the Federal courts.

Boske v. Comingore, 177 U. S. 459, 44 L. ed. 846, 20 Sup. Ct. Rep. 701, s. c. Re Comingore, 96 Fed. 552; Re Lamberton, 124 Fed. 446. See Foster's Fed. Pr. 5th ed. § 339.

It was formerly *held* that income returns are not privileged communications, and the collector has no right to withhold them in evidence.

Ruling, 10 Int. Rev. Rec. 5.

Held, under the old Income Tax Act, that a clerk to the commissioners was bound to produce under subpoena the defendant's appointment as collector, and to give evidence as to the latter's acts notwithstanding the oath.

Lee v. Birrell (1813), 3 Campb. 336.

A plaintiff by bill unsuccessfully sought to compel a defendant to make a discovery of his returns for income tax. *Quære* whether a discovery of income tax returns could, under any circumstance, be compelled. The disclosure might render the defendant liable to penalties under the Income Tax Act.

Mitchell v. Koecker (1849), 18 L. J. Ch. N. S. 294, 11 Beav. 380, 12 Beav. 44, 13 Jur. 797, per Lord Langdale, M. P.

The Solicitor of Inland Revenue declined to produce letters received from the defender, as being prejudicial to the public

service, and such refusal was upheld by the Court of Session in Scotland.

Brown's Trustees v. Hay (1897), 35 Scot. L. R. 340, 3 Tax. Cas. 598.

Damages were awarded against the defender, who had been employed in winding up the affairs of a firm of solicitors, and who had furnished to the Inland Revenue contents of documents relating to the business profits of a former client of such solicitors.

Brown's Trustees v. Hay (1898), 35 Scot. L. R. 877.

In an action for damages for slander, it was held that the defender was not entitled to production of the pursuer's income tax returns.

Gray v. Wyllie (1904), 6 F. 448, 41 Scot. L. R. 342.

It has now been decided in Scotland that the production of the returns will not be ordered, but a diligence was allowed as to the receipts.

Shaw v. Kay, 12 Scot. L. T. R. 495, 5 Tax Cas. 74 (1904).

The court in Scotland formerly refused a motion for the production of income tax receipts.

Christie v. Craik, 2 F. 1287, 37 Scot. L. R. 503 (1900).

Macdonald v. Hedderwick, 3 F. 674, 38 Scot. L. R. 455 (1901).

As to the production by the surveyor of taxes, in the winding-up of a company, of balance sheets relating to income tax assessments.

In re Hargreaves, Limited [1900], 1 Ch. 347, 48 Week. Rep. 241, 4 Tax Cas. 173.

It was held that the defender was not entitled to production of the pursuer's income tax returns.

Gray v. Wyllie, 41 Scot. L. R. 342 (1904).

Held that the Crown has a right of discovery, but cannot be compelled to give discovery.

Attorney-General v. Newcastle-on-Tyne Corporation [1897], 2 Q. B. 384, 66 L. J. Q. B. N. S. 593, 77 L. T. N. S. 203.

As to the production and discovery of documents generally

in revenue proceedings, etc., see Attorney-General v. Emerson (1882), L. R. 10 Q. B. Div. 191, 52 L. J. Q. B. N. S. 67, 48 L. T. N. S. 18; and Attorney-General v. Newcastle-on-Tyne Corporation [1897], 2 Q. B. 384, 66 L. J. Q. B. N. S. 593, 77 L. T. N. S. 203. In the latter case, it was laid down that the Crown has a right of discovery, but cannot be compelled to give discovery.

If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year,

And for any default in the making or rendering of such list or return, with the declaration annexed.—Act of June 30, 1864, § 120.

And if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business.—Act of August 28, 1894, § 32.

And if such corporation, company, or association shall refuse to comply with such request.—§ 36, post, p. 369.

A statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required.—Act of August 28, 1897, § 32.

or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.

That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 or more than $1000.—Subsection F, supra.

Shall forfeit as a penalty the sum of one thousand dollars.—Act of June 30, 1864, § 120, and see same penalty in § 122; Act of July 13, 1866, § 1.

The corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid.—Act of August 28, 1894, § 32.

The only penalty provided by § 122 of the Act of June 30,

1864, as amended by the Act of July 13, 1866, is $1,000 fine.

Erskine v. Milwaukee, etc. Ry. 94 U. S. 619, 24 L. ed. 298 (1876), WAITE, C. J.

The penalty of $1,000 was not increased by the Act of July 14, 1870.

Elliott v. Ry. Co. 99 U. S. 573, 25 L. ed. 292 (1878), WAITE, C. J.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided*, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: And *provided further*, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine islands are concerned be vested in the courts of the first instance of said islands: And *provided further*, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.—Subsection N, supra.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or

source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government."

Before the amendment:

"Sec. 3167. If any collector or deputy collector, or any inspector, or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding one thousand dollars, or to be imprisoned for not exceeding one year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government."

"Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects."

"Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return re-

quired by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person:

"Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

That jurisdiction is hereby conferred upon the district courts of the United States for the districts within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process. K. infra.

"Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, stamp, or tax imposed by law, when not otherwise provided for, on or before the first Monday of March in each year, and in other cases before the day of levy, to make a list or return, verified by oath or affirmation, to the deputy collector of the district where located, of the articles or objects charged with a special duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a specific or ad valorem duty or tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any special tax as aforesaid, then, and in that case, it shall be the duty of the deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, That in case any person shall be absent from his or her residence or place of business at the time a deputy collector shall call for the annual list or return, and no annual list or return has been rendered by such person to the deputy collector as required by law, it shall be the duty of such deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum, addressed to such person, requiring him or her to render to such deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent or contains any undervaluation or under-statement, it shall be lawful for the collector to summon such person or any other person, having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection-district where such person may be

found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

"Sec. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than twenty dollars nor more than one thousand dollars. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.—Subsection F, supra.

The collector or any deputy collector in every district shall enter into and upon the premises, if it be necessary, of every person therein who has taxable property and who refuses or neglects to render any return or list required by law, or who renders a false or fraudulent return or list, and make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return,

according to the form prescribed, of the objects liable to tax, owned or possessed or under the care or management of such person, and the Commissioner of Internal Revenue shall assess the tax thereon, including the amount, if any, due for special tax, and in case of any return of a false or fraudulent list or valuation, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall, in all cases, be collected at the same time and in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held good and sufficient for all legal purposes."—U. S. R. S. § 3176 before amendment.

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

All persons, firms, copartnership, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagees of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and

joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same, and they are each hereby made personally liable for such tax.—Subsection C, supra.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such pereson, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.U. S. R. S. § 3173 as amended by subsection I, supra.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection,

and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

See U. S. R. S. §§ 3182, 3186, 3187, 3210, 3213-3216, 3220, 3229. These are explained in part I, supra.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collectd in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively:

That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.—Subsection H, supra.

And provided further, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands:

That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.—Subsection K, supra.

And provided further, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.—Subsection b, supra.

N. That for the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such sums

as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem necessary, for information, detection, and bringing to trial and punishment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of $800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States, or any of the Territories thereof: Provided, That no agent paid from this appropriation shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than $5 a day and $3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service.

In the office of the Commissioner of Internal Revenue at Washington, District of Columbia, there shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury one additional deputy commissioner, at a salary of four thousand dollars per annum; two heads of divisions, whose compensation shall not exceed two thousand five hundred dollars per annum; and such other clerks, messengers, and employees, and to rent such quarters and to purchase such supplies as may be necessary: Provided, That for a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: Provided further, That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work.

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Section IV.

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T. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

"Being of opinion that so much of the sections of this law as lays a tax on income from real and personal property is invalid, we are brought to the question of the effect of that conclusion upon these sections as a whole. It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this act, except sections twenty-seven to thirty-seven, inclusive, which relate to the subject which has been under discussion; and as to them we think the rule laid down by Chief Justice SHAW in Warren v. Charlestown, 2 Gray, 84, is applicable, that if the different parts 'are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' Or, as the point is put by Mr. Justice MATTHEWS in Poindexter v. Greenhow, 114 U. S. 270, 304, 29 L. ed. 185, 197, 5 Sup. Ct. Rep. 903, 962: 'It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute, for the law intended by the legislature, one they may never have been willing by itself to enact.' And again, as stated by the same eminent judge in Spraigue v. Thompson, 118 U. S. 90, 95, 30 L. ed. 115, 117, 6 Sup. Ct. Rep. 988, where it was "urged that certain illegal exceptions in a section of a statute

might be disregarded, but that the rest could stand: 'The insuperable difficultly with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions.' According to the census, the true valuation of real and personal property in the United States in 1890 was $65,037,091,197, of which real estate with improvements thereon made up $39,544,544,333. Of course, from the latter must be deducted, in applying these sections, all unproductive property and all property whose net yield does not exceed four thousand dollars; but, even with such deductions, it is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all invested personal property, bonds, stocks, investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an act; and the scheme must be considered as a whole. Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections twenty-seven to thirty-seven, inclusive, of the act, which became a law without the signature of the President on August 28, 1894, are wholly inoperative and void."

Pollock v. Farmers' Loan & Trust Co. 158 U. S. 601, 635–637, 39 L. ed. 1108, 1125, 1126, 15 Sup. Ct. Rep. 912, *per* Fuller, C. J.

U. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

Approved. 9.10 p. m. October third, nineteen hundred and thirteen.

PART IV.

PREVIOUS INCOME TAX LAWS OF THE UNITED STATES.

ACT OF AUGUST 5, 1861.

12 St. at L. 292, 309.

CHAPTER XLV.—AN ACT TO PROVIDE INCREASED REVENUE FROM IMPORTS, TO PAY INTEREST ON THE PUBLIC DEBT, AND FOR OTHER PURPOSES.

SECTION 49.

And be it further enacted, That, from and after the first day of January next, there shall be levied, collected, and paid, upon the annual income of every person residing in the United States, whether such income is derived from any kind of property, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, if such annual income exceeds the sum of eight hundred dollars, a tax of three per centum on the amount of such excess of such income above eight hundred dollars: *Provided,* That, upon such portion of said income as shall be derived from interest upon treasury notes or other securities of the United States, there shall be levied, collected, and paid a tax of one and one half per centum. Upon the income, rents, or dividends accruing upon any property, securities, or stocks, owned in the United States by any citizen of

the United States residing abroad, there shall be levied, collected, and paid a tax of five per centum, excepting that portion of said income derived from interest on Treasury notes and other securities of the Government of the United States, which shall pay one and one half per centum. The tax herein provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said tax, to wit, the year next preceding the first of January, eighteen hundred and sixty-two; and the said taxes, when so assessed and made public, shall become a lien on the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid: *Provided,* That in estimating said income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted.

SECTION 50.

And be it further enacted, That it shall be the duty of the President of the United States, and he is hereby authorized, by and with the advice and consent of the Senate, to appoint one principal assessor and one principal collector in each of the States and Territories of the United States, and in the District of Columbia, to assess and collect the internal duties or income tax imposed by this act, with authority in each of said officers to appoint so many assistants as the public service may require, to be approved by the Secretary of the Treasury. The said taxes to be assessed and collected under such regulations as the Secretary of the Treasury may prescribe. The said collectors, herein authorized to be appointed, shall give bonds, to the satisfaction of the Secretary of the Treasury, in such sums as he may prescribe, for the faithful performance of their respective duties. And the Secretary of the Treasury shall prescribe such reasonable compensation for the assessment and collection of said internal duties or income tax as may appear to him just and proper; not, however, to exceed in any case the sum of two thousand five hundred dollars per annum for the principal officers herein referred to, and twelve hundred dollars per annum for an assistant. The assistant collectors herein provided shall give bonds to the satisfaction

of the principal collector for the faithful performance of their duties. The Secretary of the Treasury is further authorized to select and appoint one or more depositaries in each State for the deposit and safe-keeping of the moneys arising from the taxes herein imposed, when collected, and the receipt of the proper officer of such depositary to the collector for the moneys deposited by him shall be the proper voucher for such collector in the settlement of his account at the Treasury Department. And he is further authorized and empowered to make such officer or depositary the disbursing agent of the Treasury for the payment of all interest due to the citizens of such State upon the Treasury notes or other Government securities issued by authority of law. And he shall also prescribe the forms of returns to be made to the department by all assessors and collectors appointed under the authority of this act. He shall also prescribe the form of oath or obligation to be taken by the several officers authorized or directed to be appointed and commissioned by the President under this act, before a competent magistrate duly authorized to administer oaths, and the form of the return to be made thereon to the Treasury Department.

Section 51.

And be it further enacted, That the tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-two, and all sums due and unpaid at that day shall draw interest thereafter at the rate of six per centum per annum; and if any person or persons shall neglect or refuse to pay after due notice said tax assessed against him, her, or them, for the space of more than thirty days after the same is due and payable, it shall be lawful for any collector or assistant collector charged with the duty of collecting such tax, and they are hereby authorized, to levy the same on the visible property of any such person, or so much thereof as may be sufficient to pay such tax, with the interest due thereon, and the expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of the sale thereof; and in case of the failure of any person or persons authorized to

act as agent or agents for the collection of the rents or other income of any person residing abroad shall neglect or refuse to pay the tax assessed thereon (having had due notice) for more than thirty days after the thirtieth of June, eighteen hundred and sixty-two, the collector or his assistant, for the district where such property is located, or rents or income is payable, shall be and hereby is authorized to levy upon the property itself, and to sell the same, or so much thereof as may be necessary to pay the tax assessed, together with the interest and expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of sale. And in all cases of the sale of property herein authorized, the conveyance by the officer authorized to make the sale, duly executed, shall give a valid title to the purchaser, whether the property sold be real or personal. And the several collectors and assistants appointed under the authority of this act may, if they find no property to satisfy the taxes assessed upon any person by authority of the forty-ninth section of this act, and which such person neglects to pay as hereinbefore provided, shall have power, and it shall be their duty, to examine under oath the person assessed under this act, or any other person, and may sell at public auction, after ten days' notice, any stock, bonds, or choses in action, belonging to said person, or so much thereof as will pay such tax and the expenses of such sale; and in case he refuses to testify, the said several collectors and assistants shall have power to arrest such person and commit him to prison, to be held in custody until the same shall be paid, with interest thereon, at the rate of six per centum per annum, from the time when the same was payable as aforesaid, and all fees and charges of such commitment and custody. And the place of custody shall in all cases be the same provided by law for the custody of persons committed for any cause by the authority of the United States, and the warrant of the collector, stating the cause of commitment, shall be sufficient authority to the proper officer for receiving and keeping such person in custody until the amount of said tax and interest, and all fees and the expense of such custody, shall have been fully paid and discharged; which fees and expenses shall be the same as are chargeable under the laws of the United States in other cases of commitment and custody. And it shall be

the duty of such collector to pay the expenses of such custody, and the same, with his fees, shall be allowed on settlement of his accounts. And the person so committed shall have the same right to be discharged from such custody as may be allowed by the laws of the State or Territory, or the District of Columbia, where he is so held in custody, to persons committed under the laws of such State or Territory, or District of Columbia, for the non-payment of taxes, and in the manner provided by such laws; or he may be discharged at any time by order of the Secretary of the Treasury.

ACT OF JULY 1, 1862.

12 St. at L. 432.

Chapter CXIX.—An Act to Provide Internal Revenue to Support the Government and to Pay Interest on the Public Debt.

Section 80.

Railroads, Steamboats, and Ferry-Boats.

And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any railroad or railroads upon which steam is used as a propelling power, or of any steamboat or other vessel propelled by steam power, shall be subject to and pay a duty of three per centum on the gross amount of all the receipts of such railroad or railroads or steam vessel for the transportation of passengers over and upon the same; and any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any railroad or railroads using any other power than steam thereon, or owning, possessing, or having the care or management of any ferry-boat, or vessel used as a ferry-boat, propelled by steam or horse-power, shall be subject to and pay a duty of one and a half per centum upon the gross receipts of such railroad or ferry-boat, respectively, for the transportation of passengers over and upon said

railroads, steamboats, and ferry-boats, respectively; and any person, or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any bridge authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description over such bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. And the owner, possessor, or person or persons having the care and management of any such railroad, steamboat, ferry-boat, or other vessel, or bridge, as aforesaid, shall, within five days after the end of each and every month, commencing as hereinbefore mentioned, make a list or return to the assistant assessor of the district within which such owner, possessor, company, or corporation may have his or its place of business, or where any such railroad, steamboat, ferry-boat or bridge is located or belongs, respectively, stating the gross amount of such receipts for the month next preceding, which return shall be verified by the oath or affirmation of such owner, possessor, manager, agent, or other proper officer, in the manner and form to be prescribed from time to time by the Commissioner of Internal Revenue, and shall also, monthly, at the time of making such return, pay to the collector or deputy collector of the district the full amount of duties which have accrued on such receipts for the month aforesaid; and in case of neglect or refusal to make said lists or return for the space of five days after such return should be made as aforesaid, the assessor or assistant assessor shall proceed to estimate the amount received and the duties payable thereon, as hereinbefore provided in other cases of delinquency to make return for purposes of assessment; and for the purpose of making such assessment, or of ascertaining the correctness of any such return, the books of any such person, company, or corporation shall be subject to the inspection of the assessor or assistant assessor on his demand or request therefor; and in case of neglect or refusal to pay the duties as aforesaid when the same have been ascertained as aforesaid, for the space of five days after the same shall have become payable, the owner, possessor, or person having the management as aforesaid, shall pay, in addition, five per centum on the amount of such duties; and for any attempt knowingly to evade the payment of such

duties, the said owner, possessor, or person having the care or management as aforesaid, shall be liable to pay a penalty of one thousand dollars for every such attempt, to be recovered as provided in this act for the recovery of penalties; and all provisions of this act in relation to liens and collections by distraint not incompatible herewith, shall apply to this section and the objects therein embraced: *Provided,* That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid, or be liable to pay, such fare to the contrary notwithstanding.

Section 81.

Railroad Bonds.

And be it further enacted, That on and after the first day of July, eighteen hundred and sixty-two, any person or persons owning or possessing, or having the care or management of any railroad company or railroad corporation, being indebted for any sum or sums of money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is, or shall be, stipulated to be paid, or coupons representing the interest shall be or shall have been issued to be paid, and all dividends in scrip or money or sums of money thereafter declared due or payable to stockholders of any railroad company, as part of the earnings, profits, or gains of said companies, shall be subject to and pay a duty of three per centum on the amount of all such interest or coupons or dividends whenever the same shall be paid; and said railroad companies or railroad corporations, or any person or persons owning, possessing, or having the care or management of any railroad company or railroad corporation, are hereby authorized and required to deduct and withhold from all payments made to any person, persons, or party, after the first day of July, as aforesaid, on account of any interest or coupons or dividends due and payable as aforesaid, the said duty of sum of three per centum; and

the duties deducted as aforesaid, and certified by the president or other officer of said company or corporation, shall be a receipt and discharge, according to the amount thereof, of said railroad companies or railroad corporations, and the owners, possessors, and agents thereof, on dividends and on bonds and other evidences of their indebtedness, upon which interest or coupons are payable, holden by any person or party whatsoever, and a list or return shall be made and rendered within thirty days after the time fixed when said interest or coupons or dividends become due or payable, and as often as every six months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the duties received and chargeable, as aforesaid, during the time when such duties have accrued or should accrue, and remaining unaccounted for; and there shall be annexed to every such list or return a declaration under oath or affirmation, in manner and form as may be prescribed by the Commissioner of Internal Revenue, of the president, treasurer, or some proper officer of said railroad company or railroad corporation, that the same contains a true and faithful account of the duties so withheld and received during the time when such duties have accrued or should accrue, and not accounted for, and for any default in the making or rendering of such list or return, with the declaration annexed, as aforesaid, the person or persons owning, possessing, or having the care or management of such railroad company or railroad corporation, making such default, shall forfeit, as a penalty, the sum of five hundred dollars; and in case of any default in making or rendering said list, or of any default in the payment of the duty, or any part thereof, accruing or which should accrue, the assessment and collection shall be made according to the general provisions of this act.

Section 82.

Banks, Trust Companies, Savings Institutions, and Insurance Companies.

And be it further enacted. That on and after the first day of July, eighteen hundred and sixty-two, there shall be levied, collected, and paid by all banks, trust companies, and savings

institutions, and by all fire, marine, life, inland, stock, and mutual insurance companies, under whatever style or name known or called, of the United States or Territories, specially incorporated, or existing under general laws, or which may be hereafter incorporated or exist as aforesaid, on all dividends in scrip or money thereafter declared due or paid to stockholders, to policy-holders, or to depositors, as part of the earnings, profits, or gains of said banks, trust companies, savings institutions, or insurance companies, and on all sums added to their surplus or contingent funds, a duty of three per centum: *Provided,* That the duties upon the dividends of life insurance companies shall not be deemed due, or to be collected until such dividends shall be payable by such companies. And said banks, trust companies, savings institutions, and insurance companies are hereby authorized and required to deduct and withhold from all payments made to any person, persons, or party, on account of any dividends or sums of money that may be due and payable, as aforesaid, after the first day of July, eighteen hundred and sixty-two, the said duty of three per centum. And a list or return shall be made and rendered within thirty days after the time fixed when such dividends or sums of money shall be declared due and payable, and as often as every six months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the amount of duties accrued or which should accrue from time to time, as aforesaid, during the time when such duties remain unaccounted for, and there shall be annexed to every such list or return a declaration, under oath or affirmation, to be made in form and manner as shall be prescribed by the Commissioner of Internal Revenue, or the president, or some other proper officer of said bank, trust company, savings institution, or insurance company, respectively, that the same contains a true and faithful account of the duties which have accrued or should accrue and not accounted for, and for any default in the delivery of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company making such default shall forfeit, as a penalty, the sum of five hundred dollars.

Section 84.

And be it further enacted, That on the first day of October, Anno Domini eighteen hundred and sixty-two, and on the first day of each quarter of a year thereafter, there shall be paid by each insurance company, whether inland or marine, and by each individual or association engaged in the business of insurance from loss or damage by fire, or by the perils of the sea, the duty of one per centum upon the gross receipts for premiums and assessments by such individual, association, or company during the quarter then preceding; and like duty shall be paid by the agent of any foreign insurance company having an office or doing business within the United States.

Section 86.

Salaries and Pay of Officers and Persons in the Service of the United States.

And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the payroll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment.

SECTION 88.

ADVERTISEMENT.

And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid by any person or persons, firm, or company, publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, on the gross receipts for all advertisements, or all matters for the insertion of which in said newspaper or other publication, as aforesaid, or in extras, supplements, sheets, or fly-leaves accompanying the same, pay is required or received, a duty of three per centum; and the person or persons, firm, or company, owning, possessing, or having the care or management of any and every such newspaper or other publication, as aforesaid, shall make a list or return quarterly, commencing as heretofore mentioned, containing the gross amount of receipts as aforesaid, and the amount of duties which have accrued thereon, and render the same to the assistant assessor of the respective districts where such newspaper, magazine, review, or other literary or news publication is or may be published, which list or return shall have annexed a declaration, under oath or affirmation, to be made according to the manner and form which may be from time to time prescribed by the Commissioner of Internal Revenue, or the owner, possessor, or person having the care or management of such newspaper, magazine, review, or other publication, as aforesaid, that the same is true and correct, and shall also, quarterly and at the time of making said list or return, pay to the collector or deputy collector of the district, as aforesaid, the full amount of said duties; and in case of neglect or refusal to comply with any of the provisions contained in this section, or to make and render said list or return, as aforesaid, for the space of thirty days after the time when said list or return ought to have been made, as aforesaid, the assistant assessor of the respective districts shall proceed to estimate the duties, as heretofore provided in other cases of delinquency; and in case of neglect or refusal to pay the duties, as aforesaid, for the space of thirty days after said duties become due and payable, said owner,

possessor, or person or persons having the care or management of said newspapers or publications, as aforesaid, shall pay, in addition thereto, a penalty of five per centum on the amount due; and in case of fraud or evasion, whereby the revenue is attempted to be defrauded or the duty withheld, said owners, possessors, or person or persons having the care or management of said newspapers or other publications, as aforesaid, shall forfeit and pay a penalty of five hundred dollars for each offense, or for any sum fraudulently unaccounted for; and all provisions in this act in relation to liens, assessments, and collections, not incompatible herewith, shall apply to this section and the objects herein embraced: *Provided,* That in all cases where the rate or price of advertising is fixed by any law of the United States, or Territory, it shall be lawful for the company, person or persons, publishing said advertisements, to add the duty or tax imposed by this act to the price of said advertisements, any law, as aforesaid, to the contrary notwithstanding: *Provided further,* That the receipts for advertisements to the amount of one thousand dollars, by any person or persons, firm or company, publishing any newspaper, magazine, review, or other literary, scientific, news publication, issued periodically, shall be exempt from duty: *And provided further,* That all newspapers whose circulation does not exceed two thousand copies shall be exempted from all taxes for advertisements.

Section 89.

Income Duty.

And be it further enacted, That for the purpose of modifying and re-enacting, as hereinafter provided, so much of an act, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved fifth of August, eighteen hundred and sixty-one, as relates to income tax; that is to say, sections forty-nine, fifty (except so much thereof as relates to the selection and appointment of depositaries), and fifty-one, be, and the same are hereby, repealed.

SECTION 90.

And be it further enacted, That there shall be levied, collected, and paid annually, upon the annual gains, profits, or income of every person residing in the United States, whether derived from any kind of property, rents, interests, dividends, salaries, or from any professional trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars, and upon the annual gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned by the United States by any citizen of the United States, residing abroad, except as hereinafter mentioned, and not in the employment of the government of the United States, there shall be levied, collected, and paid a duty of five per centum.

SECTION 91.

And be it further enacted, That in estimating said annual gains, profits, or income, whether subject to a duty, as provided in this act, of three per centum, or of five per centum, all other national, state, and local taxes, lawfully assessed upon the property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived, shall be first deducted from the gains, profits, or income of the person or persons who actually pay the same, whether owner or tenant, and all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above six hundred dollars, or derived from interest or dividends on stocks, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, ex-

press, telegraph, steamboat, ferry-boat, or railroad company, or corporation, or on any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry-boat, express, or railroad companies, as aforesaid, or derived from advertisements, or on any articles manufactured, upon which specific, stamp or ad valorem duties shall have been directly assessed or paid, shall also be deducted; and the duty herein provided for shall be assessed and collected upon the income for the year ending the thirty-first day of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter: *Provided,* That upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collected, and paid a duty not exceeding one and one-half of one per centum, any thing in this act to the contrary notwithstanding.

SECTION 92.

And be it further enacted, That the duties on income herein imposed shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-three, and in each year thereafter until and including the year eighteen hundred and sixty-six and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of five percentum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons; and if any person or persons, or party, liable to pay such duty, shall neglect or refuse to pay the same, the amount due shall be a lien in favor of the United States from the time it was so due until paid, with the interest, penalties, and costs, that may accrue in addition thereto, upon all the property, and rights to property, stocks, securities, and debts of every de-

scription from which the income upon which said duty is assessed or levied shall have accrued, or may or should accrue; and in default of the payment of said duty for the space of thirty days, after the same shall have become due, and be demanded as aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the Commissioner of Internal Revenue, upon the certificate of the collector or deputy collector that said duty is due and unpaid for the space of ten days after notice duly given of the levy of such duty, shall issue a warrant in form and manner to be prescribed by said Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for nonpayment, sufficient for the fees and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector or deputy collector of the sale, shall give title to the purchaser, of all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificates of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding, or claiming to hold, possession of such securities or other evidences of debt.

SECTION 93.

And be it further enacted, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether

such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provision of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: *Provided,* That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

ACT OF MARCH 3, 1863.

12 St. at L. 713, 718, 719.

CHAPTER LXXIV.—AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE INTERNAL REVENUE TO SUPPORT THE GOVERNMENT AND PAY INTEREST ON THE PUBLIC DEBT," APPROVED JULY FIRST, EIGHTEEN HUNDRED AND SIXTY-TWO, AND FOR OTHER PURPOSES.

SECTION 1.

Be it enacted, * * * * * *

That section ninety-one be amended by striking out the word "gas" wherever it occurs, and by striking out the words "or on any articles manufactured" after the word "advertisements."

That section ninety-three be amended so that in case of neglect or refusal to make the returns referred to in said section the proceedings thereafter for the assessment and collection of the duty shall be in the same manner as provided for in other cases of neglect.

SECTION 3.

And be it further enacted, That any person or persons, firm, company, or corporation, who shall issue tickets or contracts of insurance against fatal or non-fatal injury to persons while travelling by land or water, shall pay a duty of one per centum on the gross amount of all the receipts for such insurance, and shall be subject to all the provisions and regulations of existing law applicable thereto, in relation to insurance companies: *Provided,* That no stamp duty shall be required upon tickets or contracts of insurance as aforesaid, when limited to fatal or non-fatal injury to persons while travelling.

SECTION 7.

And be it further enacted, That the commissioner of internal revenue be, and he is hereby, authorized to prescribe such meth-

od for the cancellation of stamps as a substitute for or in addition to the method now prescribed by law, as he may deem expedient and effectual. And he is further authorized in his discretion to make the application of such method imperative upon the manufacturers of proprietary articles, and upon stamps of a nominal value exceeding twenty-five cents each.

SECTION 9.

And be it further enacted, That any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any ferry-boat, or vessel used as a ferry-boat, propelled by steam or horse-power, in lieu of the duties now imposed by law, shall be subject to pay a duty of one and one-half of one per centum upon the gross receipts of such ferry-boat; and the return and payment thereof shall be made in the manner prescribed in the act to which this act is an amendment.

SECTION 10.

And be it further enacted, That on and after the first day of April, eighteen hundred and sixty-three, any person or persons, firms, companies, or corporations carrying on or doing an express business shall, in lieu of the tax and stamp duties imposed by existing laws, be subject to and pay a duty of two per centum on the gross amount of all the receipts of such express business, and shall be subject to the same provisions, rules, and penalties, as are prescribed in section eighty of the act to which this is an amendment, for the persons, firms, companies, or corporations owning or possessing or having the management of railroads, steamboats, and ferry-boats; and all acts or parts of acts inconsistent herewith are hereby repealed.

SECTION 11.

And be it further enacted, That in estimating the annual gains, profit, or income, of any person, under the act to which this act is an amendment, the amount actually paid by such person for the rent of the dwelling-house or estate on which he resides shall be first deducted from the gains, profit, or income of such person.

ACT OF JUNE 30, 1864.

13 St. at L. 223, 275.

Chapter CLXXIII.—An Act to Provide Internal Revenue to Support the Government, to Pay Interest on the Public Debt, and for other Purposes.

Section 103.

And be it further enacted, That every person, firm, company, or corporation, owning or possessing, or having the care or management of, any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach or other vehicle engaged or employed in the business of transporting passengers or property for hire, or in transporting the mails of the United States, on any canal, the water of which is used for mining purposes, shall be subject to and pay a duty of two and one-half per centum upon the gross receipts of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: *Provided,* That the duty hereby imposed shall not be charged upon receipts for the transportation of persons or property, or mails, between the United States and any foreign port; and any person or persons, firms, companies, or corporations, owning, possesing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description, over such toll-road, ferry, or bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. But when the gross receipts of any such bridge or toll-road shall not exceed the amount necessarily expended to keep such bridge or road in repair, no tax shall be imposed on such receipts: *Provided,* That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitation which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary notwithstanding.

SECTION 104.

And be it further enacted, That any person, firm, company, or corporation carrying on or doing an express business, shall be subject to and pay a duty of three per centum on the gross amount of all the receipts of such express business.

SECTION 105.

And be it further enacted, That there shall be levied, collected, and paid a duty of one and a half of one per centum upon the gross receipts of premiums, or assessments for insurance from loss or damage by fire or by the perils of the sea, made by every insurance company, whether inland or marine or fire insurance company, and by every association or individual engaged in the business of insurance against loss or damage by fire or by the perils of the sea; and by every person, firm, company, or corporation, who shall issue tickets, or contracts of insurance against injury to persons while traveling by land or water; and a like duty shall be paid by the agent of any foreign insurance company having an office or doing business within the United States; and that in the account or return to be rendered, they shall state the amount insured, renewed, or continued, the gross amount of premiums received and assessments collected, and the duties by law accruing thereon for the quarter then next preceding.

SECTION 107.

And be it further enacted, That any person, firm, company, or corporation owning or possessing or having the care or management of any telegraphic line by which telegraphic despatches or messages are received or transmitted, shall be subject to, and pay a duty of, five per centum on the gross amount of all receipts of such person, firm, company, or corporation.

SECTION 108.

And be it further enacted, That any person, firm, or corporation, or the manager or agent thereof, owning, conducting, or having the care or management of any theatre, opera, circus,

museum, or other public exhibition of dramatic or operatic representations, plays, performances, musical entertainments, feats of horsemanship, acrobatic sports, or other shows which are opened to the public for pay, but not including occasional concerts, school exhibitions, lectures, or exhibitions of works of art, shall be subject to and pay a duty of two per centum on the gross amount of all receipts derived by such person, firm, company, or corporation from such representations, plays, performances, exhibitions, shows, or musical entertainments.

SECTION 109.

And be it further enacted, That any person, firm, company, or corporation, owning or possessing, or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any ferry, toll-road or bridge, as enumerated and described in section one hundred and two (three) of this act; or carrying on or doing an express business; or engaged in the business of insurance, as hereinbefore described; or owning or having the care and management of any telegraph line, or owning, possessing, leasing, or having the control or management of any circus, theatre, opera, or museum, shall within twenty days after the end of each and every month, make a list or return in duplicate to the assistant assessor of the district, stating the gross amount of their receipts, respectively, for the month next preceding, which return shall be verified by the oath or affirmation of such owner, possessor, manager, agent, or other proper officer, in the manner and form to be prescribed from time to time by the Commissioner of Internal Revenue; and shall also pay to the collector the full amount of duties which have accrued on such receipts for the month aforesaid. And in case of neglect or refusal to make said list or return for the space of ten days after such return should have been made as aforesaid, the assessor or assistant assessor shall proceed to estimate the amount received and the duties payable thereon, and shall add thereto ten per centum, as hereinbefore provided in other cases of delinquency, to make return for purposes of assessment; and for the purpose of making such assessment, or of ascertaining the correctness of any such return, the books of any such person, firm, company, or corporation shall be subject

to the inspection of the assessor or assistant assessor on his demand or request therefor. And in case of neglect or refusal to pay the duties, with the addition aforesaid, when the same have been ascertained, for the space of ten days after the same shall have become payable, the owner, possessor, or person having the management as aforesaid, shall pay, in addition, ten per centum on the amount of such duties and addition; and for any attempt knowingly to evade the payment of such duties, the said owner, possessor, or person having the care or management as aforesaid, shall be liable to pay a penalty of one thousand dollars for every such attempt, to be recovered as provided in this act for the recovery of penalties. And all provisions of this act in relation to liens and collections by distraint, not incompatible herewith, shall apply to this section and the objects therein embraced.

SECTION 110.

And be it further enacted, That there shall be levied, collected, and paid a duty of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking; and a duty of one twenty-fourth of one per centum each month as aforesaid, upon the average amount of the capital of any bank, association, company, or corporation, or person engaged in the business of banking beyond the amount invested in United States bonds; and a duty of one twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional duty of one sixth of one per centum, each month, upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person, and upon any amount of such circulation, beyond the average amount of the circulation that had been issued as afore-

said by any such bank, association, corporation, company, or person, for the six months preceding the first day of July, eighteen hundred and sixty-four. And on the first Monday of August next, and of each month thereafter, a true and accurate return of the amount of circulation, of deposit, and of capital as aforesaid, for the previous month, shall be made and rendered in duplicate by each of such banks, associations, corporations, companies, or persons to the assessor of the district in which any such bank, association, corporation, or company may be located, or in which such person may reside, with a declaration annexed thereto, and the oath or affirmation of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amount of circulation, deposits, and capital as aforesaid, subject to duty as aforesaid, and shall transmit the duplicate of said return to the Commissioner of Internal Revenue, and within twenty days thereafter shall pay to the said Commissioner of Internal Revenue the duties hereinbefore prescribed upon the said amount of circulation, of deposits, and of capital, as aforesaid, and for any refusal or neglect to make or to render such return and payment as aforesaid, any such bank, association, corporation, company, or person so in default shall be subject to and pay a penalty of two hundred dollars, besides the additional penalty and forfeiture in other cases provided in this act; and the amount of circulation, deposit, and capital, as aforesaid, in default of the proper return, shall be estimated by the assessor or assistant assessor of the district as aforesaid, upon the best information he can obtain; and every such penalty, together with the duties as aforesaid, may be recovered for the use of the United States in any court of competent jurisdiction. And in case of banks with branches; the duty herein provided for shall be imposed upon the circulation of each branch, severally, and the amount of capital of each branch shall be considered to be the amount allotted to such branch; and so much of an act entitled "An act to provide ways and means for the support of the government," approved March three, eighteen hundred and sixty-three, as imposes any tax on banks, their

circulation, capital, or deposits, other than is herein provided, is hereby repealed: *Provided,* That this section shall not apply to associations which are taxed under and by virtue of the act "to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof;" nor to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking: *And provided, further,* That any bank ceasing to issue notes for circulation, and which shall deposit in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury may prescribe, shall be exempt from any tax upon such circulation.

SECTION 111.

And be it further enacted, That every individual partnership, firm, and association, being proprietors, managers, or agents of lotteries, shall pay a tax of five per centum on the gross amount of the receipts from the said business; and all persons making such sales shall, within ten days after the first day of each and every month, make and render a list or return in duplicate to the assistant assessor of the gross amount of such sales, made as aforesaid, with the amount of duty which has accrued or should accrue thereon; which list shall have annexed thereto a declaration under oath or affirmation, in such form and signed by such officer, agent, or clerk, as may be prescribed by the Commissioner of Internal Revenue, that the same is true and correct, and that the said proprietors, managers, and agents shall on or before the twentieth day of each and every month, as aforesaid, pay the collector or deputy collector of the proper district the amount of the duty or tax as aforesaid. And in default of making such lists or returns, the said proprietors, managers, and agents, and all other persons making such sales, shall be subject to and pay a penalty of one thousand dollars, besides the additions, penalties, and forfeitures in other cases provided; and the said proprietors, managers, and agents shall, in default of paying the said duty or tax at the time herein required, be subject to and pay a penalty of one thousand dollars, or be imprisoned

not exceeding one year. In all cases of delinquency in making said list, return, or payment, the assessments and collections shall be made in the manner prescribed in the provisions of this act in relation to manufactures, articles, and products: *Provided,* That the managers of any sanitary fair, or of any charitable, benevolent, or religious association, may apply to the collector of the district and present to him proof that the proceeds of any contemplated lottery, raffle, or gift enterprise will be applied to the relief of sick and wounded soldiers, or to some other charitable use, and thereupon the commissioner shall grant a permit to hold such lottery, raffle, or gift enterprise, and the said sanitary fair, or charitable or benevolent association, shall be exempt from all charge, whether from tax or license, in respect of such lottery, raffle, or gift enterprise: *Provided, further,* That nothing in this section contained shall be construed to legalize any lottery.

Section 114.

And be it further enacted, That there shall be levied, collected, and paid by any person or persons, firm, or company, publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, on the gross receipts for all advertisements, or all matters for the insertion of which in said newspapers or other publication, as aforesaid, or in extras, supplements, sheets, or fly-leaves, accompanying the same, pay is required or received, a duty of three per centum; and the person or persons, firm or company, owning, possessing, or having the care or management of any and every such newspaper, or other publication, as aforesaid, shall make a list or return on the first day of January, April, July, and October of each year, containing the gross amount of receipts as aforesaid, and the amount of duties which have accrued thereon, and render the same in duplicate to the assistant assessor of the district where such newspaper, magazine, review, or other literary or news publication is or may be published; which list or return shall have annexed a declaration, under oath or affirmation, to be made according to the manner and form which may be from time to time prescribed by the Commissioner of Internal Revenue, of the owner, possessor, or per-

son having the care or management of such newspaper, magazine, review, or other publication, as aforesaid, that the same is true and correct; and shall also, quarterly, within ten days after the time of making said list or return, pay to the collector or deputy collector of the district the full amount of said duties. And in case of neglect or refusal to comply with any of the provisions contained in this section, or to make and render said list or return, for the space of ten days after the time when said list or return ought to have been made, as aforesaid, the assistant assessors of the respective districts shall proceed to estimate the duties as heretofore provided in other cases of delinquency; and in case of neglect or refusal to pay the duties, as aforesaid, for the space of ten days after said duties become due and payable, and have been demanded, said owner, possessor, or person or persons having the care or management of said newspapers or publications, as aforesaid, shall pay, in addition thereto, a penalty of ten per centum on the amount due. And in case of fraud or evasion, whereby the revenue is attempted to be defrauded, or the duty withheld, said owners, possessors, or person or persons having the care or management of said newspapers or other publications, as aforesaid, shall forfeit and pay a penalty of one thousand dollars for each offense, or for any sum fraudulently unaccounted for. And all provisions in this act in relation to returns, additions, penalties, forfeitures, liens, assessments, and collection, not incompatible herewith, shall apply to this section and the objects herein embraced: *Provided,* That in all cases where the rate or price of advertising is fixed by any law of the United States, state, or territory, it shall be lawful for the company, person or persons, publishing said advertisements, to add the duty or tax imposed by this act to the price of said advertisements, any law to the contrary notwithstanding; and that the receipts for advertisements to the amount of six hundred dollars annually, by any person or persons, firm, or company publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, shall be exempt from duty: *And provided, further,* That all newspapers whose average circulation does not exceed two thousand copies shall be exempted from all taxes for advertisements.

SECTION 116.

And be it further enacted, That there shall be levied, collected, and paid annually upon the annual gains, profits, or income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, salaries, or from any profession, trade, employment, or vocation, carried on in the United States, or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of six hundred dollars, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars; and a duty of seven and one half of one per centum per annum on the excess over five thousand dollars and not exceeding ten thousand dollars; and a duty of ten per centum on the excess over ten thousand dollars. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, or income for the year ending the thirty-first day of December next, preceding the time for levying, collecting, and paying said duty: *Provided,* That income derived from interest upon notes, bonds, and other securities of the United States, shall be included in estimating incomes under this section: *Provided,* That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife, except in cases where such separate income shall be derived from the separate and individual estates, gains, or labor of the wife or child: *And provided, further,* That net profits realized by sales of real estate purchased within the year, for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year.

SECTION 117.

And be it further enacted, That in estimating the annual gains, profits, or income of any person, all national, state, and municipal taxes, other than the national income tax, lawfully

assessed within the year upon the property or sources of income of any person, as aforesaid, from which said annual gains, profits, or income is or should be derived, shall be deducted, in addition to six hundred dollars, from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above the rate of six hundred dollars per annum; and there shall also be deducted the income derived from dividends on shares in the capital stock of any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slack-water company, and the interest on any bonds, or other evidences of indebtedness of any such corporation, or company, which shall have been assessed and the tax paid, as hereinafter provided; also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person, or by his family, in his own right, or in the right of his wife, shall not be included and assessed as part of the income of such person. In estimating the annual gains, profits, or income of any person, the interest over and above the amount of interest paid upon all notes, bonds, and mortgages, or other forms of indebtedness, bearing interest, whether due and paid or not, if good and collectable, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetable, or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, shall be included and assessed as part of the income of such person for each year, and the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise. In esti-

mating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to carry on land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual or ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided,* That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, in such manner as the Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, may prescribe.

Section 118.

And be it further enacted, That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or in other fiduciary capacity, to make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which he resides, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore mentioned, stating the sources from which said income is derived, whether from any kind of property, or the purchase and sale of property, rents, interest, dividends, salaries, or from any profession, trade, employment, or vocation, or otherwise. And in case of neglect or refusal to make such return, the assessor or assistant assessor

shall assess the amount of his or her income, and the duty thereon, in the same manner as is provided for in other cases of neglect and refusal to furnish lists or returns in the provisions of this act, where not otherwise incompatible; and the assistant assessor may increase the amount of the list or return, or of any party making such return, if he shall be satisfied that the same is understood: *Provided,* That any party in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or may declare that he or she has been assessed elsewhere in the same year for, and has paid an income duty under authority of the United States, and shall thereupon be exempt from income duty in said district; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, such party may be permitted to declare, under oath or affirmation, the amount of annual income, or the amount held in trust, as aforesaid, liable to be assessed, and the same, so declared, shall be received by such assistant assessor as true, and as the sum upon which duties are to be assessed and collected, except that the deductions claimed in such cases shall not be made or allowed until approved by the assistant assessor. But any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon shall be final; and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue.

Section 119.

And be it further enacted, That the duties on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as afore-

said, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estate of deceased and insolvent persons. And if any person liable to pay such duty shall neglect or refuse to pay the same, after such demand, the amount due shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property and rights to property belonging to such person; and in default of the payment of said duty aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the collector, after demands duly given, as aforesaid, shall issue a warrant, in form and manner to be prescribed by the Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to propety, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for non-payment, sufficient for the fees, costs, and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector shall vest in the purchaser all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether canceled or not. And said certificates of sale of the collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

SECTION 120.

And be it further enacted, That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy-holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted, and the duty paid to the Commissioner of Internal Revenue within thirty days after the time when any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of duties as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation, in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of the duties as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company, making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the duty as required, or any part thereof, the assessment and collection of the duty and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal: *Provided,* That the

duty upon the dividends of life insurance companies shall not be deemed due or to be collected until such dividends shall be payable by such companies, nor shall the portion of premiums returned by mutual life insurance companies to their policy-holders be considered as dividends or profits under this act.

SECTION 121.

And be it further enacted, That any bank legally authorized to issue notes as circulation, which shall neglect or omit to make dividends or additions to its surplus or contingent fund as often as once in six months, shall make a list or return in duplicate, under oath or affirmation of the president or cashier, to the assessor or assistant assessor of the district in which it is located, on the first day of January and July in each year, or within thirty days thereafter, of the amount of profits which have accrued or been earned and received by said bank during the six months next preceding said first days of January and July; and shall present one of said lists or returns and pay to the collector of the district a duty of five per centum on such profits; and in case of default to make such list or return and payment within the thirty days as aforesaid, shall be subject to the provisions of the foregoing section of this act: *Provided,* That when any dividend is made which includes any part of the surplus or contingent fund of any bank, trust company, savings institution, insurance or railroad company, which has been assessed and the duty paid thereon, the amount of duty so paid on that portion of the surplus or contingent fund may be deducted from the duty on such dividend.

SECTION 122.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its

stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted and the duty paid to the Commissioner of Internal Revenue within thirty days after the time when said interest, coupons, or dividends become due and payable, and as often as every six months; and said list or return shall contain a true and faithful account of the amount of the duty, and there shall be annexed thereto a declaration of the president or treasurer of the company, under oath or affirmation, in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of said duty. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the duty as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of the payment of the duty, or any part thereof, as aforesaid, the assessment and collection of the duty and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

SECTION 123.

And be it further enacted, That there shall be levied, col-

lected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of five per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or when settling or adjusting the accounts of any such officer, to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the Commissioner of Internal revenue: *Provided,* That payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.

SECTION 178.

That consuls of foreign countries in the United States, who are not citizens thereof, shall be, and hereby are, exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in such countries: *Provided,* That the governments which such consuls may represent shall extend similar exemptions to consuls of the United States.

JOINT RESOLUTION OF JULY 4, 1864.

13 Stat. at L. 417.

[No. 77] Joint Resolution Imposing a Special Income Duty.

That in addition to the income duty already imposed by law, there shall be levied, assessed, and collected on the first day of October, eighteen hundred and sixty-four, a special income duty upon the gains, profits, or income for the year ending the thirty-first day of December next preceding the time herein named, by levying, assessing, and collecting said duty of all persons residing within the United States, or of citizens of the United States residing abroad, at the rate of five per centum on all sums exceeding six hundred dollars, and the same shall be levied, assessed, estimated, and collected, except as to the rate, according to the provisions of existing laws for the collection of an income duty, annually, where not applicable hereto; and the Secretary of the Treasury is hereby authorized to make such rules and regulations as to time and mode, or other matters to enforce the collection of the special income duty herein provided for, as may be necessary: *Provided,* That in estimating the annual gains, profits, or income, as aforesaid, for the foregoing special income duty, no deductions shall be made for dividends or interest received from any association, corporation, or company, nor shall any deduction be made for any salary or pay received.

ACT OF MARCH 3, 1865.

13 St. at L. 469, 479.

Chapter LXXVIII.—An Act to Amend an Act entitled "An Act to Provide Internal Revenue to Support the Government, to Pay Interest on the Public Debt, and for other Purposes," Approved June Thirtieth, Eighteen Hundred and Sixty-Four.

Section 1.

Be it enacted, * * * * * * That section one hundred and three be amended by adding

the following after the word "vehicle," where it occurs the second time in the section: *"Provided,* That this section shall not apply to those teams, wagons, and vehicles used in the transportation of silver ores from the mines where the same is (are) excavated to the place where they are reduced or worked."

That section one hundred and three be further amended by inserting after the words "and any foreign port," the words, "but such duty shall be assessed upon the transportation of persons and property shipped from a port within the United States, through a foreign territory, to a port within the United States, and shall be asserted upon, and collected from, persons, firms, companies, or corporations within the United States receiving such freight or transportation." And that section one hundred and three be amended by adding at the end of said section the following: *"And provided, further,* That no tax under this section shall be assessed upon any person whose gross receipts do not exceed one thousand dollars per annum."

That section one hundred and five be amended by striking out, at the end thereof, the words "for the quarter then next preceding."

That section one hundred and nine be amended by striking out, after the words "one hundred and" the word "two" and inserting in lieu thereof the word "three."

That section one hundred and ten be amended by striking out, after the words "and redemption thereof," the words "nor to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking."

That section one hundred and sixteen be amended by striking out all after the enacting clause, and inserting, in lieu thereof, the following:

"That there shall be levied, collected, and paid annually upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the

United States or elsewhere, or from any other source whatever, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars; and in ascertaining the income of any person liable to an income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the Commissioner of Internal Revenue, or other officer authorized to receive the same, shall be included: and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of December, next preceding the time for levying, collecting, and paying said duty: *Provided,* That incomes derived from interest upon notes, bonds, and other securities of the United States, and also all premiums on gold and coupons shall be included in estimating incomes under this section. *Provided, further,* That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife: *And provided, further,* That net profits realized by sales of real estate purchased within the year, for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year."

That section one hundred and seventeen be amended by striking out all after the enacting clause, and inserting in lieu thereof the following:

"That in estimating the annual gains, profits, and income of any person, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services, in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above the rate of six hundred dollars per annum: also the amount paid by any person for

the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead, used or occupied by any person or by his family, in his own right, or in the right of his wife, shall not be included and assessed as part of the income of such person. In estimating the annual gains, profits, or income of any person, the interest, received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, less the interest paid by or due from such person, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and of live stock, and the amount of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetables or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included and assessed as part of the income of such person for each year, and his share of the gains and profits of all companies, whether incorporated or partnership, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise. In estimating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to cultivate land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided,* That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have

accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income to whom the same shall have been paid, in such manner as the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, may prescribe."

That section one hundred and eighteen be amended by striking out all after the enacting clause, and inserting in lieu thereof the words, "That it shall be the duty of all persons of lawful age to make and render a list or return, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardians or trustees reside, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee; and the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any person, guardian, or trustee shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts or any other evidence, and to add twenty-five per centum as a penalty to the amount of the duty due on such list in all cases of wilful neglect or refusal to make and render a list or return, and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of duty ascertained to be due, the duty and the additions thereto as penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false and fraudulent return: *Provided,* That any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be pre-

scribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty elsewhere in the same year, under authority of the United States, upon his or her gains and profits, as prescribed by law, and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty in said district; or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of annual income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue."

That section one hundred and nineteen be amended by striking out the words "for thirty days," and after the words "for ten days after," inserting the words "notice and."

That section one hundred and twenty be amended by striking out, at the end thereof, the word "act," and inserting in lieu thereof the word "section."

ACT OF JULY 13, 1866.

14 St. at L. 98, 135.

CHAPTER CLXXXIV.—AN ACT TO REDUCE INTERNAL TAXATION AND TO AMEND AN ACT ENTITLED "AN ACT TO PROVIDE INTERNAL REVENUE TO SUPPORT THE GOVERNMENT, TO PAY INTEREST ON THE PUBLIC DEBT, AND FOR OTHER PURPOSES," APPROVED JUNE THIRTIETH, EIGHTEEN HUNDRED AND SIXTY-FOUR, AND ACTS AMENDATORY THEREOF.

SECTION 9.

Be it enacted, * * * * * * That section one hundred and three be amended by striking out all after the enacting clause, and inserting in lieu thereof the following: That every person, firm, company, or corporation owning or possessing or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach, or other vehicle, except hacks or carriages not running on continuous routes, engaged or employed in the business of transporting passengers for hire, or in transporting the mails of the United States upon contracts made prior to August first, eighteen hundred and sixty-six, shall be subject to and pay a tax of two and one half per cent of the gross receipts from passengers and mails of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: *Provided,* That the tax hereby imposed shall not be assessed upon receipts for the transportation of persons or mails between the United States and any foreign port; but such tax shall be assessed upon the transportation of persons from a port within the United States through a foreign territory to a port within the United States, and shall be assessed upon and collected from persons, firms, companies, or corporations within the United States, receiving hire or pay for such transportation of persons or mails; and so much of section one hundred and nine as requires returns to be made of receipts hereby exempted

from tax when derived from transporting property for hire is hereby repealed: *Provided,* also, That any person or persons, firms, companies, or corporations owning, possessing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description, over such toll-road, ferry, or bridge, shall be subject to and pay a tax of three per centum of the gross amount of all their receipts of every description; but when the gross receipts of any such bridge or toll-road, for and during any term of twelve consecutive calendar months, shall not exceed the amount necessarily expended during said term to keep such bridge or road in repair, no tax shall be assessed upon such receipts during the month next following any such term: *Provided, further,* That all such persons, companies, and corporations shall, until the thirtieth day of April, eighteen hundred and sixty-seven, have the right to add the tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement, with any person or company which may have paid or be liable to pay such fare, to the contrary notwithstanding. And whenever the addition to any fare shall amount only to the fraction of one cent, any person, or company, liable to the tax of two and a half per centum, may add to such fare one cent in lieu of such fraction; and such person or company shall keep for sale, at convenient points, tickets in packages of twenty and multiples of twenty, to the price of which only an amount equal to the revenue tax shall be added: *And provided, further,* That no tax under the foregoing provisions of this section shall be assessed upon any person, firm, company, or corporation, whose gross receipts do not exceed one thousand dollars per annum: *And provided, further,* That all boats, barges, and flats not used for carrying passengers nor propelled by steam or sails, which are floated or towed by tug-boats or horses, and used exclusively for carrying coal, oil, minerals, or agricultural products to market, shall be required hereafter, in lieu of enrolment fees or tonnage tax, to pay an annual special tax, for each and every such boat of a capacity exceeding twenty-five tons, and not exceeding one hundred tons, five dollars; and when exceeding one hundred tons, shall be re-

quired to pay ten dollars; and said tax shall be assessed and collected as other special taxes provided for in this act.

That section one hundred and seven be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That any person, firm, company, or corporation owning or possessing or having the care or management of any telegraphic line by which telegraphic despatches or messages are received or transmitted, shall be subject to and pay a tax of three per centum on the gross amount of all receipts of such person, firm, company, or corporation.

That section one hundred and ten be amended by striking out all after the enacting clause, and inserting in lieu thereof the following: That there shall be levied, collected, and paid a tax of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking; and a tax of one twenty-fourth of one per centum each month, as aforesaid, upon the capital of any bank, association, company, or corporation, and on the capital employed by any person in the business of banking beyond the average amount invested in United States bonds; and a tax of one twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one sixth of one per centum, each month, upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person. And a true and accurate return of the amount of circulation, of deposit, and of capital, as aforesaid, and of the amount of notes of persons, state banks, or state banking associations, paid out by them for the previous month, shall be made and rendered monthly by each of such banks, associations, corporations, companies, or persons to the assessor of the district in

which any such bank, association, corporation, or company may be located, or in which such person has his place of business, with a declaration annexed thereto, and the oath or affirmation of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax as aforesaid; and for any refusal or neglect to make or to render return and payment, any such bank, association, corporation, company, or person so in default, shall be subject to and pay a penalty of two hundred dollars, besides the additional penalty and forfeitures in other cases provided by law; and the amount of circulation, deposit, capital, and notes of persons, state banks, and banking association paid out, as aforesaid, in default of the proper return, shall be estimated by the assessor or assistant assessor of the district as aforesaid, upon the best information he can obtain; and every such penalty may be recovered for the use of the United States in any court of competent jurisdiction. And in the case of banks with branches, the tax herein provided for shall be assessed upon the circulation of each branch, severally, and the amount of capital of each branch shall be considered to be the amount allotted to such branch; and so much of an act entitled "an act to provide ways and means for the support of the government," approved March three, eighteen hundred and sixty-three, as imposes any tax on banks, their circulation, capital, or deposits, other than is herein provided, is hereby repealed: *Provided*, That this section shall not apply to associations which are taxed under and by virtue of the act "to provide a national currency secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof." And the deposits in associations or companies known as provident institutions, savings banks, savings funds, or savings institutions, having no capital stock and doing no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to the association or company, shall be exempt from tax on so much of their deposits as they have invested in securities of the United States, and on all deposits, less than five hun-

dred dollars, made in the name of any one person; and the returns required to be made by such provident institutions and savings banks after July, eighteen hundred and sixty-six, shall be made on the first Monday of January and July of each year, in such form and manner as may be prescribed by the Commissioner of Internal Revenue.

That section one hundred and eleven be amended by inserting after the words "proprietors, managers, or agents of lotteries," the words: "and all lottery ticket dealers."

That section one hundred and fourteen be amended by inserting after the word "periodically," in the first sentence of said section, the words: "or otherwise, or publishing any guide, almanac, catalogue, directory, or any other paper or book."

That section one hundred and sixteen be amended by inserting after the words, "on the excess over five thousand dollars," the following: "and a like tax shall be levied, collected, and paid, annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof."

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That the taxes on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased or insolvent persons.

That section one hundred and twenty be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That there shall be levied and collected a tax of five per centum on all dividends in scrip or money thereafter declared due wherever, and whenever the same shall be payable, to stockholders, policy-holders, or depositors or parties whatsoever, including non-residents, whether citizens or aliens, as part of the earnings, income, or gains of any bank,

trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual. under whatever name or style known or called, in the United States or Territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said tax, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid the said tax of five per centum. And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of taxes as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation in form and manner, as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of the taxes as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the tax as required, or any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of the law in other cases of neglect and refusal: *Provided,* That the tax upon the dividends of life insurance companies shall not be deemed due until such dividends are payable; nor shall the portion of premiums returned by mutual life insurance companies to their policy-holders, nor the annual or semi-annual interest allowed or paid to the depositors in savings banks or savings institutions be considered as dividends.

That section one hundred and twenty-two be amended by striking out all after the enacting clause and inserting in

lieu thereof the following: That any railroad, canal, turnpike, canal navigation, or slack-water company, indebted for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip or money due or payable to its stockholders, including non-residents, whether citizens or aliens, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a tax of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever and wherever the same shall be payable, and to whatsoever party or person the same may be payable, including non-residents, whether citizens or aliens; and said companies are hereby authorized to deduct and withhold from all payments on account of any interest, or coupons, and dividends, due and payable as aforesaid, the tax of five per centum; and the payment of the amount of said tax so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which said interest, coupons, or dividends become due and payable, and as often as every six months, and said list or return shall contain a true and faithful account of the amount of tax, and there shall be annexed thereto a declaration of the president or treasurer of the Company, under oath or affirmation in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of said tax. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the tax as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of

the payment of the tax or any part thereof, as aforesaid, the assessment and collection of the tax and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

That section one hundred and twenty-two be further amended by adding thereto the following proviso: *Provided,* That whenever any of the companies mentioned in this section shall be unable to pay the interest on their indebtedness, and shall in fact fail to pay such interest, that in such cases the tax levied by this section shall not be paid to the United States until said company resume the payment of interest on their indebtedness.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That there shall be levied, collected, and paid on the salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a tax of five per centum on the excess above the said six hundred dollars, and a tax of ten per centum on the excess over five thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, or upon settling and adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax, and they shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as a part of the internal tax; and the pay-roll, receipts, or account of officers or persons paying such tax, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted

and paid over to the Commissioner of Internal Revenue or other officer authorized to receive the same: *Provided,* That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: *Provided, further,* That this section shall not apply to payments made to mechanics or laborers employed upon public works.

ACT OF MARCH 2, 1867.

14 St. at L. 471, 477.

Chapter CLXIX.—An Act to Amend Existing Laws Relating to Internal Revenue, and for other Purposes.

Section 13.

And be it further enacted, That the act entitled "An act to provide Internal Revenue to support the government, to pay interest on the public debt, and for other purposes," approved June thirty, eighteen hundred and sixty-four, and as subsequently amended, be further amended as follows, namely:—

Income.—That section one hundred and sixteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, as follows: That there shall be levied, collected, and paid annually upon the gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States, or elsewhere, or from any other source whatever, a tax of five per centum on the amount so derived over one thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States, by persons residing without the United States, and not citizens thereof. And the tax herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.

That section one hundred and seventeen be amended by striking out all after the enacting clause and inserting in lieu thereof, the following: That, in estimating the gains, profits, and income of any person, there shall be included all income derived from interest upon notes, bonds, and other securities of the United States; profits realized within the year from sales of real estate purchased within the year or within two years previous to the year for which income was (is) estimated; interest received or accrued upon old (all) notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, less the interest which has become due from said person during the year; the amount of all premium on gold and coupons; the amount of sales of live stock, sugar, wool, butter, che(e)se, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, not including any part thereof consumed directly by the family; all other gains, profits, and income derived from any source whatever, except the rental value of any homestead used or occupied by any person or by his family in his own right, or in the right of his wife; and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same, if divided, whether divided or otherwise, except the amount of income received from institutions or corporations whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the officer authorized to receive the same; and except that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted. And in addition to one thousand dollars exempt from income tax, as hereinbefore provided, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income, of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; losses actually sustained during the year arising from fires, ship-wreck, or incurred in trade and debts ascertained to be worthless, but excluding all estimated depreciations of values and losses with-

in the year on sales of real estate purchased two years previous to the year for which income is estimated; the amount actually paid for labor or interest by any person who rents lands or hires labor to cultivate land, or who conducts any other business from which income is actually derived; the amounts actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family; the amount paid out for usual or ordinary repairs: *Provided,* That no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments, made to increase the value of any property or estate: *And provided, further,* That only one deduction of one thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make such deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interest, only one deduction shall be made in their favor: *And provided, further,* That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of one thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

That section one hundred and eighteen be amended by striking out all after the enacting clause and inserting, in lieu, thereof, the following: That it shall be the duty of all persons of lawful age to make and render a list or return, on or before the day prescribed by law, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, and administrators, or any person acting in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such person acting in a fiduciary capacity resides, of the amount of income, gains, and

profits of any minor or person for whom they act; and the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any such person shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return it shall be the duty of the assessor or assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, or his books or accounts, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of wilful neglect or refusal to make and render a list or return; and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false and fraudulent return: *Provided,* That any party, in his or her own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of one thousand dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income tax elsewhere in the same year, under authority of the United States, upon his or her income, gains, and profits, as prescribed by law; and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income tax in the said district; or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deduction claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of

the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal revenue: *Provided, further,* That no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That the taxes on incomes herein imposed shall be levied on the first day of March, and be due and payable on or before the thirtieth day of April, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annuall due and unpaid after the t[h]irtieth of April, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid and interest at the rate of one per centum per month, upon said tax from the time the same became due, as a penalty, except from the estates of deceased, insane, or insolvent persons: *Provided,* That the tax on incomes for the year eighteen hundred and sixty-six shall be levied on the day this takes effect.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of one thousand dollars per annum, a tax of five per centum on the excess above the said one thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such offi-

cers or persons to deduct and withhold the aforesaid tax of five per centum; and the pay-roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same: *Provided,* That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: *Provided, further,* That this section shall not apply to payments made to mechanics or laborers employed upon public works: *And provided, further,* That in case it should become necessary for showing the true receipts of the government under the operations of this section upon the books of the Treasury Department, the requisite amount may be carried from unappropriated moneys in the treasury to the credit of said account; and this section shall take effect upon salary and compensation for the month of March, eighteen hundred and sixty- seven.

ACT OF JULY 14, 1870.

16 St. at L. 256, 257.

Chap. CCLV.—An Act to Reduce Internal Taxes, and for other Purposes.

Section 6.

And be it further enacted, That there shall be levied, and collected annually, as hereinafter provided, for the years eighteen hundred and seventy and eighteen hundred and seventy-one, and no longer, a tax of two and one half per centum upon the gains, profits, and income of every person residing in the United States, and of every citizen of the United States resid-

ing abroad, derived from any source whatever, whether within or without the United States, except as hereafter provided, and a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any person residing without the United States, and not a citizen thereof.

Section 7.

And be it further enacted, That in estimating the gains, profits, and income of any person, there shall be included all income derived from any kind of property, rents, interest received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, interest upon notes, bonds, or other securities of the United States; and the amount of all premium on gold and coupons; the gains, profits, and income of any business, profession, trade, employment, office, or vocation; including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress; except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been withheld; the share of any person of the gains and profits, whether divided or not, of all companies or partnerships, but not including the amount received from any corporations whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made, and of interest or coupons paid by such corporations; profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay or grain, fruits, vegetables, or other productions, being the growth or produce of the estate of such person, but not including any part thereof consumed directly by the family; and all other gains, profits, and income drawn from any source what-

ever, but not including the rental value of the homestead used or occupied by any person, or by his family.

SECTION 8.

And be it further enacted, That military or naval pensions allowed to any person under the laws of the United States, and the sum of two thousand dollars of the gains, profits, and income of any person, shall be exempt from said income tax, in the manner hereinafter provided. Only one deduction of two thousand dollars shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or of husband and wife; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits; and guardians and trustees shall be allowed to make the deduction in favor of each ward or benficiary except that in a case of two or more wards or beneficiaries comprised in one family, having joint property interest, only one deduction shall be made in their favor. For the purpose of allowing said deduction from the income of any religious or social community holding all their property and the income therefrom jointly and in common, each five of the persons composing such society, and any remaining fractional number of such persons less than five, over such groups of five, shall be held to constitute a family, and a deduction of two thousand dollars shall be allowed for each of said families. Any taxes on the incomes, gains, and profits, of such societies, now due and unpaid, shall be assessed and collected according to this provision, except that the deduction shall be only one thousand dollars for any year prior to eighteen hundred and seventy.

SECTION 9.

And be it further enacted, That in addition to the exemptions provided in the preceding section, there shall be deducted from the gains, profits, and income of any person all national, state, county, and municipal taxes paid by him within the year,

whether such person be owner, tenant, or mortgagor; all his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade, and debts ascertained to be worthless, but excluding all estimated depreciation of values; the amount of interest paid during the year, and the amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived; the amount paid for the rent of the house or premises occupied as a residence for himself or his family, and the amount paid out for usual and ordinary repairs. No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate.

SECTION 10.

And be it further enacted. That the tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying and collecting said tax, and shall be levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years. And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand thereof by the collector, there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid, and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estates of deceased, insane, or insolvent persons.

SECTION 11.

And be it further enacted, That it shall be the duty of every person of lawful age, whose gross income during the preceding year exceeded two thousand dollars, to make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides, of the gross amount of his income, gains, and profits as aforesaid; but not includ-

ing the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made and of the interest or coupons paid by such corporation, nor that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress, from which tax has been deducted, nor the wages of minor children not received; and every guardian and trustee, executor or administrator, and any person acting in any of her fiduciary capacity, or as resident agent for, or copartner of, any nonresident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts. The assistant assessor shall require every such return to be verified by the oath of the party rendering it, and may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated. In case any person having a gross income as above, of two thousand dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or assistant assessor shall make such return, according to the best information he can obtain by the examination of said person or of his books or accounts or by any other evidence, and shall add, as a penalty, to the amount of the tax due thereon, fifty per centum in all cases of willful neglect or refusal to make and render a return, and one hundred per centum in all cases of a false or fraudulent return having been rendered. The tax and the addition thereto as penalty shall be assessed and collected in the manner provided for in cases of wilful neglect or refusal to render a return, or of rendering a false or fraudulent return. But no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard: *Provided*, That no col-

lector, deputy collector, assessor, or assistant assessor shall permit to be published in any manner such income returns, or any part thereof, except such general statistics, not specifying the names of individuals or firms, as he may make public, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe.

SECTION 12.

And be it further enacted, That when the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed; but such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such cases shall be allowed until approved by the assistant assessor. Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the Commissioner of Internal Revenue.

SECTION 13.

And be it further enacted, That any person in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary, or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or those of his ward, beneficiary, or principal, as required by law; and if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in the said district.

SECTION 14.

And be it further enacted, That consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in foreign countries. *Provided,* That the governments which such consuls may represent shall extend similar exemption to consuls of the United States.

SECTION 15.

And be it further enacted, That there shall be levied and collected for and during the year eighteen hundred and seventy-one a tax of two and one-half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by any of the corporations in this section hereinafter enumerated, and on the amount of all dividends of earnings, income, or gains, hereafter declared, by any bank, trust company, savings institution, insurance company, railroad company, canal company, turnpike company, canal navigation company, and slack-water company, whenever and wherever the same shall be payable, and to whatsoever person the same may be due, including non-residents, whether citizens or aliens, and on all undivided profits of any such corporation which have accrued and been earned and added to any surplus, contingent, or other fund, and every such corporation having paid the tax as aforesaid, is hereby authorized to deduct and withhold from any payment on account of interest, coupons, and dividends, an amount equal to the tax of two and one half per centum on the same; and the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an express contract: *Provided,* That the tax upon the dividends of insurance companies shall not be deemed due until such dividends are pay-

able, either in money or otherwise; and that the money returned by mutual insurance companies to their policy-holders, and the annual or semi-annual interest allowed or paid to the depositors in savings banks or savings institutions shall not be considered as dividends; and that when any dividend is made, or interest as aforesaid is paid, which includes any part of the surplus or contingent fund of any corporation which has been assessed and the tax paid thereon, or which includes any part of the dividends, interest, or coupons received from other corporations whose officers are authorized by law to withhold a per centum on the same, the amount of tax so paid on that portion of the surplus or contingent fund, and the amount of tax which has been withheld and paid on dividends, interest, or coupons so received, may be deducted from the tax on such dividend or interest.

Section 16.

And be it further enacted, That every person having the care or management of any corporation liable to be taxed under the last preceding section, shall make and render to the assessor or assistant assessor of the district in which such person has his office for conducting the business of such corporation, on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid, a true and complete return, in such form as the Commissioner of Internal Revenue may prescribe of the amount of income and profits and of taxes as aforesaid; and there shall be annexed thereto, a declaration of the president, cashier, or treasurer of the corporation, under oath, that the same contains a true and complete account of the income and profits and of taxes as aforesaid. And for any default in the making or rendering of such return, with such declaration annexed, the corporation so in default shall forfeit, as a penalty, the sum of one thousand dollars; and in case of any default in the payment of the tax as required, or of any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal.

SECTION 17.

And be it further enacted, That sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three, of the Act of June thirty, eighteen hundred and sixty-four, entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," as amended by the Act of July thirteen, eighteen hundred and sixty-six, and the Act of March two, eighteen hundred and sixty-seven, shall be construed to impose the taxes therein mentioned to the first day of August, eighteen hundred and seventy, but after that date no further taxes shall be levied or assessed under said sections; and all acts and parts of acts relating to the taxes herein repealed, and all the provisions of said acts, shall continue in full force for levying and collecting all taxes properly assessed or liable to be assessed, or accruing under the provision of former acts, or drawbacks, the right to which has already accrued or which may hereafter accrue under said acts, and for maintaining and continuing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved. And for carrying out and completing all proceedings which have been already commenced or that may be commenced to enforce such fines, penalties, and forfeitures, or criminal proceedings under said acts, and for the punishment of crimes of which any party shall be or has been found guilty.

ACT OF AUGUST 28, 1894.

28 St. at L. 509; 3 Fed. St. Ann. 622.

CHAP. CCCXLIX, AN ACT TO REDUCE TAXATION, TO PROVIDE REVENUE FOR THE GOVERNMENT, AND FOR OTHER PURPOSES.

SECTION 27.

That from and after the first day of January, eighteen hun-

dred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. And the tax herein provided for shall be assessed, by the Commissioner of Internal Revenue, and collected and paid upon the gains, profits, and income for the year ending the thirty-first of December next preceding the time for levying, collecting, and paying said tax.

Section 28.

That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on bonds, notes, or coupons; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, being the growth or produce of the estate

of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance; all other gains, profits, and income derived from any source whatever except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted, and also all interest due or paid within the year by such person on existing indebtedness. And all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: *Provided,* That no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: *Provided further,* That only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: *And provided further,* That in cases where the salary or other compensation

paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars: *Provided also,* That in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association, as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this Act.

SECTION 29.

That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed, to make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act, but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector, shall require every list or return to be verified by the

oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understood; and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: *Provided,* That any person or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed;

but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: *Provided,* That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit:

Provided, further, That no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commis-

sioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

SECTION 30.

The taxes or incomes herein imposed shall be due and payable on or before the first day of July in each year; and to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per cent per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

SECTION 31.

Any nonresident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section twenty-nine of this act as if a resident. In computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such nonresident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such nonresident shall be liable to distraint for tax: *Provided*, That nonresident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the manner as provided for collections of taxes against nonresident persons.

SECTION 32.

That there shall be assessed, levied, and collected, except as

herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness, of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships.

That said tax shall be paid on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.

That nothing herein contained shall apply to states, counties,

or municipalities; or to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions, or societies as shall, first, have no stockholders or members except depositors, and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of members who do not participate in the profits thereof and which pay interest or dividends only to their depositors; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its account of its business conducted on such mutual plan separate and apart from its other accounts.

Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy-holders or members, and having no capital stock, and no stock or shareholders, and holding all its property in trust and in reserve for its policy-holders or members; nor that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance,

and solely for the benefit of the policy-holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy-holders and members insured on said mutual plan.

That all State, county, municipal, and town taxes paid by corporations, companies, or associations shall be included in the operating and business expenses of such corporations, companies, or associations.

SECTION 33.

That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of the paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district, and said employee shall pay thereon, subject to the exemptions

herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars: *Provided,* That salaries due to State, county, or municipal officers shall be exempt from the income tax herein levied.

SECTION 34.

That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

SECTION 3167.

That it shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

SECTION 3172.

That every collector shall, from time to time, cause his deputies to proceed through every part of his district, and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

SECTION 3173.

That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided,* That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares and merchandise, articles or objects liable to pay any duty, tax or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or

affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

SECTION 3176.

When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income, or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

SECTION 35.

That every corporation, company, or association doing business for profit shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe,

of all the following matters for the whole calendar year last preceding the date of such return:

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed, and the name and address of each of such persons and the amount paid to each.

SECTION 36.

That it shall be the duty of every corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief, he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the

amount of such income and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income.

SECTION 37.

That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and when ever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

JOINT RESOLUTION OF FEBRUARY 19, 1895.

28 St. at L. 971.

JOINT RESOLUTION EXTENDING TIME TO FILE RETURNS.

Resolved, That the time fixed by existing law for the rendering of income returns, to wit: On or before the first Monday of March in every year (Section 35, Act of August 28, 1894, and Section 3173, Revised Statutes, as amended by Section

34 of that Act) is hereby extended with reference only to returns of income for the year 1894, so that it shall be lawful to make such returns for that year on or before April 15, 1895.

Resolved, That in computing incomes under said act, the amounts necessarily paid for fire insurance premiums and for ordinary repairs shall be deducted.

Resolved, That in computing incomes under said act, the amounts received as dividends upon the stock of any corporation, company, or association shall not be included in case such dividends are also liable to the tax of 2 per cent, upon the net profits of said corporation, company, or association, although such tax may not have been actually paid by said corporation, company, or association at the time of making returns by the person, corporation, or association receiving such dividends, and returns or reports of the names and salaries of employees shall not be required from employers unless called for by collector in order to verify the returns of employees.

ACT OF AUGUST 5, 1909.

"An Act to Provide Revenue, Equalize Duties, and encourage the Industries of the United States and for other purposes," Approved August 5, 1909, 36 St. at L. c. 6, p. 112, Comp. St. 1910, Supp. 1911, p. 946, Pierce Fed. Code, Supp. § 1036.

Section 38.

First. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with

respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided, however,* That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies

the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: *Provided,* That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such

bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territorities, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form

as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year

in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company is incorrect, or whenever any collector shall

report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary,

not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section ex-

cept upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under ths section to appear to testify or to produce books as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

REVISED STATUTES.

Title XXV.—Internal Revenue.—Chapter II. of Assessments and Collections.

U. S. R. S., § 3167, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6338; and October 3, 1913.

Section 3172, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6339; and October 3, 1913.

That every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

Section 3173, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6340; and October 3, 1913.

That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount according to the forms and regulations to be prescribed

by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided, further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any

other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection-district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Section 3174.

Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Section 3175.

Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon

his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such person for his default or disobedience.

SECTION 3176, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6341.

When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company, or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income, or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence, as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

Section 3177.

Any collector, deputy collector, or inspector may enter, in the day-time, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt, or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

Section 3178.

All persons required to make returns or lists of objects charged with an internal tax shall declare therein whether the several rates and amounts are stated according to their values in legal tender currency or according to their values in coined money; and in case of neglect or refusal so to declare to the satisfaction of the collector receiving such returns or lists, such officer shall make returns or lists for such persons so neglecting or refusing as in cases of persons neglecting or refusing to make the returns or lists required by law, and the Commissioner shall assess the tax thereon, and add thereto the amount of penalties imposed by law in cases of such neglect or refusal. And whenever the rates and amounts contained in the returns or lists are stated in coined money, the

collector receiving the same shall reduce them to their equivalent in legal-tender currency, according to the value of such coined money in said currency for the time covered by such returns.

Section 3179.

Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Section 3180.

When ever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes.

Section 3181.

The lists or returns aforesaid shall, where not otherwise specially provided for, be taken with reference to the day fixed for that purpose by this Title as aforesaid; and where duties accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns.

Section 3182.

The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal-revenue act, where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector is imperfect or incomplete in consequence of the omission of the name of any person liable to tax or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such persons so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed.

Section 3183.

It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give

receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Section 3184.

Where it is not otherwise provided, the collector shall in person, or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes, and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

Section 3185.

All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: *Provided,* That notice of the time when such tax becomes due and payable is given

in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

SECTION 3186.

As amended by Act of March 4, 1913.

38 St. at L. 1016.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person.

Provided, however that such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated.

SECTION 3187.

If any person liable to pay any taxes refuses or neglects

to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: *Provided,* That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to a amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Section 3188.

In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payments of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

Section 3189.

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of

property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid.

Section 3190.

When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten or more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Section 3191.

When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof

in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

SECTION 3192.

When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

SECTION 3193.

In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

SECTION 3194.

In all cases of sale, as aforesaid, the certificate of such sale shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the pur-

chaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books, and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Section 3195.

When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all cost, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof, shall by warrant on the Treasury, cause the same to be paid to the applicant.

Section 3196.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person or not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Section 3197.

The officer making the seizure mentioned in the preceding

section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice.

The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue.

At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars.

When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid.

If no person offers for sale estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and

shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue.

And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

And it is hereby provided, That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

And it is hereby further provided, That for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

Section 3198.

Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase-money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the state in which such real estate is situate upon the subject of sales of real estate under execution.

Section 3199.

The deed of sale given in pursuance of the preceding section

shall be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto.

Section 3200.

Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the state in which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Section 3201.

Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Section 3202.

The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs, or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Section 3203.

It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making said sale, amount of fees and expenses, the name of the purchaser, and the date of the deed; and said record shall be certified by the officer making the sale.

And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue.

And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof.

In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office;

And a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Section 3204.

When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption.

Section 3205.

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SECTION 3206.

The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

SECTION 3207.

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

SECTION 3208.

The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in

payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts and of all trusts created for the use of the United States in payment of such debts due them;

And, with the approval of the Secretary of the Treasury, may, at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States aforesaid.

And until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Section 3209.

Whenever a collector has on any list returned to him the name of any person not within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect

the said tax in the same way as if the name of the person and object of tax contained in the said certified statement were on any list of his own collection-district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

Section 3210.

The gross amount of all taxes and revenues received or collected by virtue of this Title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the treasurer, assistant-treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: *Provided,* That in districts where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month.

Section 3211.

The Secretary of the Treasury is authorized to designate one or more depositories in each state, for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department.

Section 3212.

Every collector shall, at the expiration of each month after

he commences his collections, transmit to the Commissioner of Internal Revenue a statement of the collections made by him within the month. And every collector shall complete the collection of all sums assigned to him for collection, and shall pay over the same into the Treasury, and shall render his accounts to the Treasury Department as often as he may be required.

SECTION 3213.

It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

SECTION 3214.

No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided,* That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

SECTION 3215.

It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to

establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws.

Section 3216.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to collectors as internal taxes are required to be paid.

Section 3217.

When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the First Comptroller of the Treasury shall, immediately after evidence of such delinquency, report the same to the Solicitor of the Treasury, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. And the said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sums which may remain due, with five per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal property on execution in the state wherein such collector resides. And the bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. And for want of goods and chattels, or other personal effects of such

collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection-district and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy. Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the state in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. And all moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid.

Section 3218.

Every collector shall be charged with the whole amount of taxes whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them receipted as aforesaid; also with the amount of taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided,* That it shall be proved to the satisfaction of the

Commissioner of Internal Revenue, who shall certify the facts to the First Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

Section 3219.

In the case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same.

Section 3220.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him, in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided*, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not

false or fraudulent, and did not contain any understatement or undervaluation.

Section 3221.

The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States, and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the same should have been drawn off by the gauger and placed in the distillery-warehouse provided by law, no tax shall be collected on such spirits so destroyed, or if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.

Section 3222.

The preceding section shall take effect in all cases of loss or destruction of distilled spirits as aforesaid which have occurred since January one, eighteen hundred and sixty-eight.

Section 3223.

When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits before and without the

tax being paid, the tax shall not be remitted to the extent of such insurance.

SECTION 3224.

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

SECTION 3225.

When the second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation.

SECTION 3226.

No suit shall be maintained in any court for the recovery of an internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of (the) Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

SECTION 3227.

No suit or proceeding for the recovery of any internal tax

alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: *Provided,* That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

Section 3228.

All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided,* That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right or action which was already barred by any statute on that date.

Section 3229.

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary, and the recommendation of the Attorney-General, he may compromise any case after suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of

the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect of delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Section 3230.

No discontinuance or *nolle prosequi* of any prosecution under section three thousand two hundred and fifty-seven shall be allowed without the permission in writing of the Secretary of the Treasury and the Attorney-General.

Section 3231.

It shall be lawful for any court in which any suit or criminal proceeding arises under the internal revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney.

REVISED STATUTES.

Supplemental Sections Relating to Internal Revenue.

Section 3140.

The word "State," used in this Title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions. And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person," as used in this Title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

Section 3162.

Every collector of internal revenue and every superintendent

of experts and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

Section 3165.

Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

Section 3166.

Any officer of internal revenue may be specially authorized by the Commissioner of Internal Revenue to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify: *Provided,* That no collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector.

Section 3169.

Every officer or agent appointed and acting under the authority of any revenue law of the United States—

First. Who is guilty of any extortion or willful oppression under color of law; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or,

Third. Who willfully neglects to perform any of the duties enjoined on him by law; or,

Fourth. Who conspires or colludes with any other person to defraud the United States; or,

Fifth. Who makes opportunity for any person to defraud the United States; or,

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States; or,

Seventh. Who negligently or designedly permits any violation of the law by any other person; or,

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or,

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or,

Tenth. Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement, of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

Section 3171.

If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, for or on account of any act by him done, under any law of the United States for the collection of taxes,

he shall be entitled to maintain suit for damages therefor, in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

Section 3447.

Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

Section 3462.

The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search-warrant, authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

PART V

STATE AND TERRITORIAL INCOME TAX LAWS.

HAWAII

SESSION OF 1901, Law of April 30, 1901.

ACT 20

AN ACT TO PROVIDE A TAX ON INCOMES.

Be it enacted by the Legislature of the Territory of Hawaii:

Sec. 1. From and after the first day of July, A. D. 1901, there shall be levied, assessed, collected and paid annually upon the gains, profits and income, over and above one thousand dollars, derived by every person residing in the Territory of Hawaii from all property owned, and every business, trade, profession, employment or vocation carried on in the Territory, and by every person residing without the Territory from all property owned, and every business, trade, profession, employment or vocation carried on in the Territory, and by every servant, or officer, of the Territory wherever residing, a tax of Two Per Cent on the amount so derived during the year preceding.

Sec. 2. There shall be levied, assessed, collected and paid annually, except as hereinafter provided, a tax of Two Per Cent on the net profit or income above actually operating and business expenses, from all property owned, and every business, trade, employment or vocation carried on in the Territory of Hawaii, of all corporations doing business for profit in the Territory, no matter where created and organized; *provided,* however, that nothing herein contained shall apply to corporations, companies or associations conducted solely for charitable, religious, educational or scientific purposes, including fraternal beneficiary societies not to insurance companies taxed on a percentage of the premiums under the authority of another Act.

Sec. 3. In estimating the gains, profits and income of any person or corporation, there shall be included all income derived from interest upon notes, bonds and other securities, except such bonds of the Territory of Hawaii or of municipalities hereafter created by the Territory the principal and interest of which are by the law of their issuance exempt from all taxation; profits realized within the year preceding from sales of real estate, including leaseholds purchased within two years; dividends upon the stock of any corporation; the amount of all premiums on bonds, notes or coupons; the amount of sales of all movable property, less the amount expended in the purchase or production of the same, and in the case of a person not including any part thereof consumed directly by him or his family; money and the value of all personal property acquired by gift or inheritance, and all other gains, profits and income derived from any source whatsoever.

Sec. 4. The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders from any fund or account, or carried to the account of any fund or used for construction, enlargements of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation.

In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession or occupation, or in managing any property, shall be deducted, and also all interest paid by such person or corporation on existing indebtedness. And all government taxes and license fees paid within the year shall be deducted from the gains, profits or income of the person who or the corporation which has actually paid the same, whether such person or corporation be owner, tenant or mortgagor; also all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred.

Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments made to increase the value of any property or estate.

Provided further, that no deduction shall be made for personal or family expenses, the exemption of one thousand dollars mentioned in Section 1 being in lieu of same.

Provided further, that where allowable herein only one deduction of one thousand dollars shall be made from the aggregate annual income of all the members of one family composed of one or both parents and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family, in which case the aggregate deduction in their favor shall not exceed one thousand dollars.

Provided further, that in assessing the income of any person or corporation there shall not be included the amount received from any corporation as dividends upon the stock of such corporation if the tax of two per cent. has been assessed upon its net profits by said corporation as required by this Act, nor any bequest or inheritance otherwise taxed as such.

Sec. 5. Every corporation doing business for profit in the Territory shall make and render to the Assessor of its Tax Division, between the first and thirty-first days of July of each year, beginning with the year 1901, a full return verified by oath or affirmation of its duly empowered officer, in such form as the Treasurer of the Territory may prescribe, of all the following matters for the whole twelve months ending June 30th last preceding the date of such return:

First: The gross receipts of such corporation from sales made at home or abroad, and from all kinds of business of any name or nature;

Second: The expenses of such corporation, exclusive of interest, annuities and dividends:

Third: The amount paid on account of interest, annuities and dividends stated separately.

Fourth: The amount expended on permanent improvements;

Fifth: The amount paid in salaries or compensation of more than six hundred dollars to each person employed, and the name and amount paid to each.

Sec. 6. It shall be the duty of all persons of lawful age having an income of six hundred dollars or more for the preceding year from all sources and of all corporations made liable to income tax to make and render a list or return, between the first and thirty-first days of July of each year, in such form

as the Treasury of the Territory may direct, to the Assessor of the Division in which such persons or corporations reside, locate or do business of the amount of their or its income, gains and profits as aforesaid; and all guardians, trustees, executors, administrators, agents, receivers, and all corporations or persons acting in a fiduciary capacity, shall make or render a list or return as aforesaid to the Assessor of the Division in which such person or corporation acting in a fiduciary capacity resides or does business of the amount of income, gains and profits of any minor or person for whom they act, and the Assessor shall require every list or return to be verified by the oath or affirmation of the person or authorized officer of the corporation making the same.

If any person or corporation refuse or neglect to render such return within the time required as aforesaid, or renders a return which in the opinion of the Assessor is false and fraudulent, or contains any understatement, it shall be lawful, for the Assessor to summon such person, or any of the officers of such corporation or person having possession, custody or care of books of accounts containing entries relating to the business of such person or corporation, or any other person he may deem proper, wherever residing or found, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogations under oath respecting any income liable to tax or the returns thereof. False, wilful testimony given before such Assessor shall be deemed perjury and punishable as such.

Sec. 7. It shall be the duty of every person or corporation doing business for profit to keep full, regular and accurate books of accounts upon which all its transactions shall be entered from day to day in regular order, which books shall be open to the inspection of the Assessor of the Division or any person authorized by him to inspect the same, during business hours.

Sec. 8. When any person or corporation having a taxable income refuses or neglects to render any return or list required by law or declines to take oath or affirmation thereto the Assessor may make such assessments as he may consider just and the same shall be binding and conclusive upon all parties and shall not be subject to appeal. In case of any false or fraudulent return or valuation by any tax payer the Assessor shall add

200 per cent. to a just valuation of the income of such tax payer and the amount of the tax assessed on such increase shall become part of the said income.

Sec. 9. Any person or corporation who or which has made a legal return as aforesaid may appeal from the amount assessed to the Tax Appeal Court constituted under Act 51 of the Session Laws of 1896, in like manner as allowed in case of property tax appeals and the said Court is hereby authorized to hear and determine such appeals subject to the revision of the Supreme Court as provided in the case of property taxes. Where the words 'valuation of property' or similar words occur in said Act concerning such appeals the words 'amount of taxable income' shall be understood in all proceedings in regard to appeals from assessment or judgments in income tax matters. Any person or corporation appealing from the assessment of the Assessor shall lodge with the Assessor on or before the first day of October of each year a notice in writing of his intention to appeal and the grounds of such appeal, and deposit with him the costs of appeal as prescribed in case of property taxes which cost shall be subject to the regulations prescribed in said Act. The said Tax Appeal Court shall sit for hearing of tax appeals under the authority of this Act between the fifth and twenty-fifth days of October of each year.

The taxes on income imposed shall be due and payable on or before the fifteenth day of November of each year; and any sum or sums annually due and unpaid after the said fifteenth day of November shall have added thereto ten per cent. on the tax which shall be and become a part of such tax. Interest at the rate of nine per cent. per annum shall be added to the amount of such tax and penalty from the time same shall become due.

All the powers, authorities and rights of compensation by Chapter 51 of the Session Laws of 1896 conferred on the Tax Appeal Court constituted under the authority of the said Chapter for hearing and determining appeals duly taken thereunder are conferred on said Court for hearing and determining appeals under this Act, and all the powers, authorities and duties contained in or enacted by said Chapter for levying, assessing,

collecting, receiving and enforcing payments of the tax imposed under the authority of said Chapter and otherwise relating thereto shall be severally and respectively conferred, practiced and exercised for levying, assessing, collecting and receiving and enforcing payment of the tax imposed under the authority of this Act, as far as the same shall not be superseded by, and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated and re-enacted in the body of this Act with reference to said tax, and all and every the regulations of the said Chapter, except as aforesaid, shall be applied, construed, deemed and taken to refer to the tax imposed under the authority of this Act, in like manner as if the same had been enacted herein. The assessments made under the authority of this Act and the Assessment Books and Delinquent Tax Lists made in accordance with the provisions of said Chapter 51 of the Session Laws of 1896 shall be *prima facie* evidence of the correctness of the tax imposed under this Act in any case.

Sec. 11. The Treasurer of the Territory shall furnish the several Assessors all necessary books, blanks, and stationery to carry out the provisions of this Act.

Sec. 12. Act 65 of the Session Laws of 1896 is hereby repealed.

Sec. 13. This Act shall take effect on the first day of July, A. D. 1901.

Approved this 30th day of April, A. D. 1901.

SANFORD B. DOLE,

Governor of the Territory of Hawaii.

MASSACHUSETTS INCOME TAX LAW.

[Mass. R. S. Ch. II. sec. 4.]

Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, except as provided in section eight * * * and so much of the income from a profession, trade,

or employment as exceeds the sum of two thousand dollars a year, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed, but no income shall be taxed which is derived from property subject to taxation.

NORTH CAROLINA INCOME TAX LAW.

[Bell's Revisal of 1908, p. 5124.]
[N. C. Laws 1907, ch. 256, §§ 22–25.]

IV. INCOMES.

Sec. 5127. Rate of; none levied by municipalities. On all gross incomes as provided in this subchapter, a tax shall be levied as follows: On the excess over the amount legally exempted, one per cent. The above tax shall not be levied upon the income derived from property already taxed, or upon income less than one thousand dollars. The incomes subject to the above tax are those derived from property not taxed; from salaries, fees and commissions, public or private; from annuities, from trades or professions, and from any other sources the incomes from which are not specifically exempted from taxation by law. No city, town, township or county shall levy any inheritance or income tax. (1907, chap. 256, §§ 24, 25.)

Sec. 5128. In excess of one thousand dollars listed. Every taxpayer shall list his income for the year ending June first from any and all sources in excess of one thousand dollars. (1907, chap. 256, § 22.)

Sec. 5129. How and when taxpayer lists. The blank for listing taxes shall contain the following question: "Was your gross income from salaries, fees, trade, profession and property not taxed, any or all of them, for the year ending June first, in excess of one thousand dollars?"

If the tax-payer answers this question in the affirmative, he shall be furnished by the list-taker with a blank in the following form, to wit:

To the Corporation Commission of the State of North Carolina:

I hereby certify that my income from salaries, fees, trade, profession and property not taxed, any or all of them, for the

year ending June first, in excess of one thousand dollars, was $ .....

.....

....., being duly sworn, says that the foregoing certificate is true to the best of his knowledge and belief.

.....

Subscribed and sworn to before me this ..... day of ..... 19.....

Said taxpayer shall fill out, sign and swear to said certificate before the list-taker or other officer authorized by law to administer oaths, and the list-taker shall forward the same to the Corporation Commission of the state not later than July first of that year, and said Corporation Commission shall certify the amount of the tax due upon the income so reported to the chairman of the board of county commissioners of the county in which said tax-payer resides, and the same shall be paid to the sheriff of said county, together with the other taxes for that year. (1907, chap. 256, § 23.)

Sec. 5130. Duty of list-taker as to. At the time such taxpayer states to the list-taker that he is liable for a tax upon his income, said list-taker shall note the same on a list to be kept by him for that purpose and on or before July fifth next he shall return such list to the chairman of the board of commissioners of that county, and said chairman shall within five days thereafter furnish to said corporation commission a copy of such list and the names of any other persons in his county not appearing thereon, who in his opinion may be liable for an income tax hereunder, and said Corporation Commission may take such steps as he may deem necessary to require any such person whose name is so added to make proper returns of his said income. (1907, chap. 256, § 23.)

Sec. 5131. Publishing income tax returns. If any person shall print or publish in any manner whatever any income tax return or any part thereof, or the amount or source of income appearing in any such return, or the taxes due thereunder, he shall be guilty of a misdemeanor and be punished by a fine not exceeding fifty dollars or be imprisoned not more than thirty days for each offense. (1907, chap. 256, § 23.)

OKLAHOMA INCOME TAX LAW.

[Oklahoma Laws 1907, p. 730. R. L. A. D. 1910, §§ 7529–7537.]

Sec. 1. At the time of making the assessment of real and personal property for taxation in this state, the assessor shall demand of each person a list of his income for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars. The blank for listing taxes shall contain the question: "Was your gross income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars?"

Sec. 2. If the person answers the question in the affirmative, he shall be furnished by the assessor with a blank in the following form, to wit:

"To the Auditor of the State of Oklahoma: I hereby certify that my income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth, in excess of three thousand five hundred dollars was $ .....

"I, ... being duly sworn, do certify that the foregoing certificate is true to the best of my knowledge and belief.

"....."

"Subscribed and sworn to before me this .... day of .....

"....."

"Assessor."

Said person shall fill out, sign, and swear to said certificate before the assessor or other officer authorized by law to administer oaths, and such assessor shall forward the same to the state auditor not later than July first of that year, and said state auditor shall certify the amount of the tax due upon the income so reported to the county clerk of the county in which said person resides, who shall extend the same on the tax rolls and shall at the same time and in the same manner as is now, or may hereafter be, provided by law relative to the tax lists of the real and personal property, deliver the same to the county treasurer.

Sec. 3. It shall be the duty of the assessor of each township to furnish the state auditor a list of all persons whom he may find who are subject to the above tax and who have filled out the list alone required, together with the names of other persons in his township not appearing thereon, who, in his opinion, may be liable for an income tax hereunder, and said state auditor may take such steps as he may deem necessary to require any such person whose name is added to make proper return of his income, and to enable him to obtain such information he or anyone designated by him to obtain such information shall have the power to summon witnesses within the county in which such persons live: *Provided,* however, if any witness so subpoenaed fails and refuses to appear and give information as provided by this section, the state auditor shall certify such fact to any court and said court shall thereupon issue a subpoena requiring the person subpoenaed to appear and give testimony as required by this section, and if any such person subpoenaed shall fail or refuse to obey said subpoena, such person shall be punished as provided by law in cases of contempt.

Sec. 4. There is hereby levied, for the benefit of the available common school fund of the state, a tax of five mills on the dollar on the excess over the amount of three thousand five hundred dollars and less than five thousand, and seven and one-half mills on the dollar on the excess of five thousand dollars and less than ten thousand dollars, and twelve mills on the dollar on the excess over the amount of ten thousand dollars and less than twenty thousand dollars, and fifteen mills on the dollar on the excess over the amount of twenty thousand dollars and less than fifty thousand dollars, and twenty mills on the dollar on the excess over the amount of fifty thousand dollars and less than one hundred thousand dollars, and thirty-three and one-third mills on the dollar upon all amounts over one hundred thousand dollars of all gross incomes.

Sec. 5. The above tax shall not be levied upon the income derived from property upon which a gross receipt or excise tax has been paid.

Sec. 6. It shall be unlawful for any person to print or publish in any manner whatever any income tax return or any part thereof, or the taxes due thereon unless the tax herein becomes

delinquent, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not to exceed fifty dollars and imprisoned in the county jail not more than thirty days for each offense.

Sec. 7. If any of the taxes herein levied become delinquent they shall become a lien on all the property, personal and real of such delinquent person and shall be subject to the same penalties and provisions as are all ad valorem taxes.

Sec. 8. Any person making the affidavits required herein, who shall knowingly swear falsely shall be guilty of perjury.

Sec. 9. Any assessor who shall fail or refuse to perform the duties herein imposed shall be guilty of malfeasance in office and shall forfeit the amount of taxes lost by the state by such failure or refusal to be collected in a civil action in the name of the state against the assessor.

Sec. 10. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 11. An emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved May 26, 1908.

SOUTH CAROLINA INCOME TAX LAW.

[Code of Laws of South Carolina, 1912, Vol. I, p. 130 (Civil Code)]

Sec. 354. Graduated Tax on Income—There shall be annually assessed, levied and collected upon the gains, gross profits and income received during the preceding calendar year by every citizen of this state, whether such gains, profits or income be derived from any kind of property, rents, interest, dividend, or salaries, or from any profession, trade, employment or vocation carried on in this state or from any other source whatever, a tax of one per centum on the amount so derived over and above $2,500 and up to $5,000; one and one-half per centum on $5,000 and over, up to $7,500; two per centum on $7,500 and over, up to $10,000; two and one-half per centum on $10,000 and over, up to $15,000; three per centum on $15,000 and over; and a like tax shall be assessed, levied, and collected annually upon the gains, profits and income from

all property owned, and every business, trade or profession carried on in this State by persons residing without this State, excepting such corporations as are hereinafter excepted: *Provided,* That in estimating the gains, profits, and income there shall not be included interest upon such bonds or securities of this State, or of the United States, the principal and interest of which are, by law of their issue, exempt from taxation.

Sec. 355. Computation of Incomes.—In computing incomes, the necessary expenses actually incurred in carrying on any business, occupation or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family, shall be deducted from the gross income or revenue; and the word "income" as used in this article, shall be deemed and taken to mean "gross profits:" *Provided,* That no deduction shall be made or allowed for any amount paid out or contracted for permanent improvements or betterment made to increase the value of any property or estate, or for the increase of capital, capital stock or assets.

Sec. 356. Definitions of Terms.—The words "citizens" and "person" as used in this Article, shall be deemed to include all natural persons, all copartners and all members of any incorporated association, and to exclude, except as hereinafter included, all corporations duly chartered by the laws of the United States.

Sec. 357. When and How Tax shall be collected.—The tax herein provided for shall be assessed, levied, and collected in the same manner, at the same time, as other taxes, and by the same County officials as are now charged with the assessment, levy, and collection of State and County taxes, and shall be paid into the State Treasury as other general State taxes.

Sec. 358. Returns.—How and When Made.—All persons liable for the payment of any of the tax herein provided for shall, at the times now or hereinafter provided by law for the making of returns of personal property, make, under oath, a full and complete list or return, in such form and manner as may be directed by the Comptroller-General, to the Auditor of the County in which they reside; or, in case of non-residents, of the County or Counties where said gains, profits or income arise, of the amount of their income, gains and profits as aforesaid, and the property or investment, if any, upon which the same are

computed, and such other particulars as may be required by the Comptroller-General.

Fiduciaries to Make Returns.—All persons, whether natural or corporations created by charter, acting as guardians, trustees, executors, administrators, agents or receivers, or in any other fiduciary capacity, shall make and render a list or return as aforesaid to the Auditor of the County in which such persons or corporations acting in a fiduciary capacity reside or do business, of the income, gains and profits of any minor or person for whom they act.

Sec. 359. Penalty for Failing to Make Return.—False Return.—Any person or corporation failing or refusing to make the list or return required in this article, or rendering a wilfully false or fraudulent list or return, shall be assessed by the Auditor on account of said income tax, in such amount as appears to him from the best information obtainable by him either by examination of the defaulting taxpayer or any other evidence, that such taxpayer is liable for; and in case of failure or neglect to make said list or return, the said Auditor shall add fifty per centum as a penalty to the amount of tax due; and in case of a wilfully false or fraudulent return or list having been rendered the Auditor shall add one hundred per centum as a penalty to said tax; the tax and the additions hereto as penalty to be assessed and collected in the manner provided for in the case of failure to make returns or lists of personal property.

Sec. 360. Returns Subject to Existing Tax Laws.—In every respect not herein specified the returns for and the levy and collection of the tax provided in this article shall be subject to all the provisions of law relative to the assessment and collection of taxes on personal property.

TENNESSEE INCOME TAX LAW.

[Tenn. Code, § 710.]

"On incomes derived from United States bonds, and all other stocks and bonds not taxed ad valorem, five per cent." *Cf.* § 690.

VIRGINIA INCOME TAX LAW.

[Virginia Acts of 1903, ch. 145, p. 155, Pollard's Va. Code, as amended by acts 1908, ch. 10, p. 20.]

Sec. 10. The classification under Schedule D shall be as follows, to wit: The aggragate amount of income in excess of one thousand dollars, whether received or due but not received, within the year next preceding the first of February in each year.

Income shall include:

First. All rents, except ground rents or rents charge, salaries, interest upon notes, bonds, or other evidences of debt of whatever description, of the United States, or any other state or country, or any corporation, company, partnership, firm, or individual, collected or received during the year, less the interest due and paid during the year.

Second. The amount of all premiums on gold, silver, or coupons.

Third. The amount of sales of live stock on meat of all kinds, less the value assessed thereon the previous year by the commissioner of the revenue.

Fourth. The amount of sales of wood, butter, cheese, hay, tobacco, grain and other vegetables and agricultural productions during the preceding year, whether the same was grown during the preceding year or not, less all sums paid for taxes and for labor, fences, fertilizers, clover or other seed purchased and used upon the land upon which the vegetable and agricultural productions were grown or produced, and the rent of said land paid by said person, if he be not the owner thereof.

Fifth. All other gains and profits derived from any source whatever.

In addition to the sum of one thousand dollars as aforesaid, there shall be deducted from the income of the person assessed, all losses sustained during the year: *Provided further,* that only one deduction of one thousand dollars shall be made from the aggregate income of any family, except that guardians may make a separate deduction of one thousand dollars, in favor of each ward, out of income coming to said ward.

Sec. 11. On income, as defined in this schedule, the tax shall be one per centum.

WISCONSIN INCOME TAX LAW.

[Wis. Laws 1911, chap. 658, General Laws 1911, ch. 48a.]

THE INCOME TAX ACT.

Persons and subjects taxable.

Sec. 1. There shall be assessed, levied, collected and paid a tax upon incomes received during the year ending December 31, 1911, and upon incomes received annually thereafter, by such persons and from such sources as hereinafter described; provided, that firms, copartnerships, corporations, joint stock companies and associations which customarily close their annual accounts on a date other than December 31, or which customarily estimate their income or profits on a basis other than of actual cash receipts and disbursements, may, with the consent and approval of the tax commission, return for assessment and taxation the income or profits earned during the business year for which the accounts of such person are customarily made up.

Definition of terms; what income taxable.

Sec. 2. 1. The term "person" as used in this act, shall mean and include any individual, firm, copatnership, and every corporation, joint stock company or association organized for profit, and having a capital stock represented by shares, unless otherwise expressly stated.

2. The term "income," as used in this act, shall include:

(a) All rent of real estate, including the estimated rental of residence property occupied by the owner thereof.

(b) All interest derived from money loaned or invested in notes, mortgages, bonds or other evidence of debt of any kind whatsoever.

(c) All wages, salaries or fees derived from services; provided that compensation to public officers for public service shall not be computed as a part of the taxable income in such cases where the taxation thereof would be repugnant to the constitution.

(d) All dividends or profits derived from stock or from the purchase and sale of any property or other valuables acquired within three years previous or from any business whatever.

(e) All royalties derived from the possession or use of franchises or legalized privileges of any kind.

(f) And all other income of any kind derived from any source whatever except such as is hereinafter exempted.

3. The tax shall be assessed, levied and collected upon all income, not hereinafter exempted, received by every person residing within the state, and by every nonresident of the state upon such income as is derived from sources within the state or within its jurisdiction. So much of the income of any person residing within the state as is derived from rentals, stocks, bonds, securities or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or without the state; provided, that any person engaged in business within and without the state shall, with respect to income other than that derived from rentals, stocks, bonds, securities or evidences of indebtedness, be taxed only upon that proportion of such income as is derived from business transacted and property located within the state, which shall be determined in the manner specified in subdivision (e) of section 1770b, as far as applicable. (1911, chap. 658.)

Deductions from gross income of corporations.

Sec. 3. Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(a) Payments made within the year for personal services of officers and employes actually employed in the production of such income; provided, there be reported the name, address and amount paid each such officer or employe to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Other ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation of property from which the income is derived. All bonds issued by a corporation shall be deemed an interest in the property and business of such corporation; and so much of the interest payable on such bonds as is represented by the ratio between the property located and business transacted within this state to the total property and business of such corporation as provided in subdivision 3, of section 1087m-2, shall be

subject to taxation under this act at the same rate as the income of such corporation. Such tax shall be assessed to the bondholders under the general designation "The bondholders of . ." (inserting the name of the corporation, but shall be a lien upon the property and business of such corporation prior to all other liens, and unless paid by the bondholders shall be enforced against the corporation. When paid by the corporation the amount of such tax may be deducted from the next interest payment on such bonds, unless otherwise provided by contract.

(c) Losses actually sustained within the year and not compensated for by insurance or otherwise.

(d) Sums paid by such person within the year for taxes imposed by any state of this union or subdivision thereof, or any territory or possession of the United States, upon the source from which the income taxed by this act is derived.

(e) Dividends or income received within the year from stocks or interest in any firm, copartnership or corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided, such firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each person owning stocks or interest in the same and the amount of dividends or income paid such person during the assessment year.

(f) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

Deductions from incomes of persons other than corporations.

Sec. 4. Persons other than corporations, joint stock companies or associations, in reporting incomes for purposes of taxation shall be allowed the following deductions:

(a) The ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, including a reasonable allowance for depreciation of the property from which the income is derived. But no deductions shall be made for any amount paid for personal services unless there be reported, the name, address and the amount paid each such employe to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Losses during the year and not compensated for by insurance or otherwise.

(c) Dividends or incomes received by any person from stocks, or interest in any firm, copartnership, corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided, said firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each such person owning stock or interest in the same and the amount of dividends or income paid such person during the assessment year.

(d) Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the name and address of the creditor.

(e) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

(f) Salaries or other compensation received from the United States by officials thereof.

(g) Pensions received from the United States.

(h) Taxes paid by such persons during the year other than inheritance taxes upon the property or business from which the income hereby taxed is derived.

(i) All inheritances, devises and bequests received during the year upon which an inheritance tax shall have been paid to this state.

(j) Insurance to the total amount of ten thousand dollars, received by any person or persons legally dependent upon the decedent, in payment of a death claim by any insurance company, fraternal benefit society or other insurer. (1911, chap. 658.)

Exemptions.

§ 5. 1. There shall be exempt from taxation under this act income as follows, to wit:

(a) To an individual income up to and including eight hundred dollars;

(b) To husband and wife, twelve hundred dollars;

(c) For each child under the age of eighteen years, two hundred dollars;

(d) For each additional person, for whose support the taxpayer is legally liable and who is entirely dependent upon the taxpayer for his support, two hundred dollars.

(e) The aforesaid exemption shall not apply to incomes derived from sources within the state by nonresidents thereof, nor to firms, copartnerships, corporations, joint stock companies nor associations. In computing said exemptions and the amounts of taxes payable under section 1087m-7 (1087m-6) of this act, the income of a wife shall be added to the income of her husband, and the income of each child under eighteen years of age to that of its parent or parents, when said wife or child is not living separately from said husband, parent or parents.

2. Income of any mutual savings or loan and building association, or of any religious, scientific, educational, benevolent or other association of individuals not organized or conducted for pecuniary profit.

3. Incomes derived from property and privileges by persons now required by law to pay taxes or license fees directly into the treasury of the state in lieu of taxes, and such persons shall continue to pay taxes and licenses as heretofore.

4. Income received by the United States, the state and all counties, cities, villages, school districts or other political units of this state. (1911, chap. 658.)

Rates of Taxation. § 6. 1. The tax to be assessed, levied and collected upon the income of all persons, except as otherwise provided by law, after making such deductions and exemptions as are hereinbefore allowed, shall be computed at the following rates, to wit:

(a) On the first one thousand dollars of taxable income or any part thereof, at the rate of one per cent;

(b) On the second one thousand dollars or any part thereof, one and one-fourth per cent;

(c) On the third one thousand dollars or any part thereof, one and one-half per cent;

(d) On the fourth one thousand dollars or any part thereof, one and three-fourths per cent;

(e) On the fifth one thousand dollars or any part thereof, two per cent;

(f) On the sixth one thousand dollars or any part thereof, two and one-half per cent;

(g) On the seventh one thousand dollars or any part thereof, three per cent;

(h) On the eighth one thousand dollars or any part thereof, three and one-half per cent;

(i) On the ninth one thousand dollars or any part thereof, four per cent;

(j) On the tenth one thousand dollars or any part thereof, four and one-half per cent;

(k) On the eleventh one thousand dollars or any part thereof, five per cent;

(l) On the twelfth one thousand dollars or any part thereof, five and one-half per cent;

(m) On any sum of taxable income in excess of twelve thousand dollars, six per cent;

2. Providing, however, that the tax to be assessed, levied and collected upon the incomes of corporations, joint stock companies or associations, after making due allowance for deductions as hereinbefore provided, shall be computed at the following rates, to wit:

(a) If the taxable income equals one per cent or less of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one-half of one per cent of such income.

(b) If the taxable income equals more than one, but does not exceed two per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one per cent of such income.

(c) If the taxable income equals more than two, but does not exceed three per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be one and one-half per cent of such income.

(d) If the taxable income equals more than three, but does not exceed four per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two per cent of such income.

(e) If the taxable income equals more than four, but does not exceed five per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two and one-half per cent of such income.

(f) If the taxable income equals more than five, but does not exceed six per cent of the assessed value of the property used

and employed in the acquisition of such income, the rate of the tax shall be three per cent of such income.

(g) And in like manner the tax upon taxable income shall continue to increase at the rate of one-half of one per cent for each additional one per cent or fractional part thereof that the taxable income bears to the assessed value of the property used and employed in the acquisition of such income, until the rate of profits equals twelve per cent of such assessed value of the property used and employed in the acquisition of such income, when such rate shall continue as a proportional rate of six per cent of such taxable income.

Alternative application of rates to corporations. Sec. 7. The legislature intends subsection 2, of section 1087m-6 of this act, to be a separable part thereof, so that said subsection may fail or be declared invalid without adversely affecting any other part of the act; provided that in event of its failing or being declared invalid the incomes of corporations, joint stock companies and associations shall be subject and shall be construed to have been subject to taxation at the rates specified in subsection 1, of section 1087m-6, and said incomes shall be reassessed by the tax commission and taxed for the years for which the rates provided in subsection 2, of section 1087m-6, shall have failed. (1911, chap. 658.)

Assessment Districts; Assessors; Deputies. § 8. 1. The state shall be divided into assessment districts by the state tax commission, but in no instance shall a county be divided.

2. Not less than thirty days prior to the first of March, 1912, there shall be selected and appointed by the state tax commission an assessor of incomes for each assessment district in the state, who shall hold office for a term of three years unless sooner removed as hereinafter provided. Such assessor shall be a citizen and an elector of this state, but need not be a resident of the district in which he is appointed to serve; provided, however, that so far as practicable, preference shall be given in making such appointments to residents of the districts.

3. The tax commission may in its discretion transfer any assessor of incomes from one district to another and may remove any assessor of incomes or his deputy from office.

4. Before entering upon his duties such assessor of incomes

shall subscribe to the constitutional oath and file the same in the office of the secretary of state.

5. The state tax commission may authorize any assessor of incomes to appoint such deputies and other assistants as may be required for the proper performance of his duties. Such deputies shall qualify in like manner and possess the same powers as the assessor. (1911, chap. 658.)

Salaries of assessors and deputies; expenses and supplies. Sec. 9. The salaries of the assessors of incomes and their deputies and assistants shall be fixed by the state tax commission, but such salaries, together with the expenses of such assessors and their deputies and assistants, shall not in any year exceed in amount five cents for every thousand dollars of the valuation of all property as fixed by the tax commission in the state assessment of the preceding year. The assessor shall be furnished all necessary printing, stationery and postage, and he and his deputies shall be entitled to receive their actual necessary expenses while traveling in the performance of their duties. The salaries of the assessor and his assistants, and all such expenditures shall be audited and paid out of the state treasury in the same manner as other similar salaries and state expenses are audited and paid.

Assessment of incomes. Sec. 10. 1. The state tax commission and the assessors of income shall annually on the first day of January, or as soon thereafter as practicable, proceed to assess as hereinafter provided every income received during the preceding calendar year liable to taxation under the provisions of this act. The assessment of corporations, joint stock companies and associations shall be made by the state tax commission, and the assessment of persons, other than corporations, joint stock companies and associations shall be by the county assessor of incomes.

2. In the performance of such duty the state tax commission and the county assessors of incomes shall respectively possess all powers now or hereafter granted by law to the state tax commission or assessors in the assessment of personal property and also the power to estimate incomes.

3. Every corporation, joint stock company or association, whether taxable under this act or not, shall furnish to the tax commission a true and accurate statement at such time, in such

manner and form and setting forth such facts as said commission shall deem necessary to enforce the provisions of this act. Such statement shall be made upon the oath or affirmation of the president, vice president or other principal officer and the treasurer of said corporation, joint stock company or association.

4. Whenever in the judgment of the assessor of incomes any person in his district other than a corporation, joint stock company or association shall be subject to an income tax under the provisions of this act, he shall require such person to make report in such manner and form as the tax commission may prescribe, specifying particularly among other items the amount of income received from services, unsecured notes, mortgages, bonds, stocks, real estate and other such information as the commission shall deem necessary to enforce the provisions of this act.

5. Every guardian, trustee, executor, administrator, agent or receiver, and every other person or corporation acting in a fiduciary capacity, shall make and render to the assessor of incomes of the district in which such representative resides, a verified list or return as aforesaid of the amount of income of any such person, ward or beneficiary. The return so made shall be signed by the person rendering it, and by the president or secretary thereof, if a corporation.

6. For each question unanswered the assessor or deputy assessor, failing to present satisfactory cause for such omission to the state tax commission, shall be subject to a penalty of five dollars, and said penalty shall be deducted from the compensation of said assessor or deputy assessor at the time such compensation is paid.

Incorrect returns by corporations; penalty for fraud and refusal to make return. Sec. 11. 1. Whenever evidence shall be produced before the state tax commission, which in the opinion of the commission, justifies the belief that in any one or more of the three next previous years the returns made by any corporation, joint stock company or association are incorrect, or are made with false or fraudulent intent, or when any corporation, joint stock company or association has failed or refused to make a return as required by law the state tax commission may require from every such corporation, joint stock company

or association such further information with reference to its capital, income, losses, expenditures and business transactions as is deemed expedient. Upon the information so required the state tax commission may make such additions or corrections to the assessment as is deemed true and just, such correction to be made in the next tax levy. Whenever the state tax commission shall so increase or make subject to tax any income, it shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any corporation, joint stock company or association is made with false or fraudulent intent or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate. The amount so added to the tax shall be collected at such time and in such manner as may be designated by the state tax commission.

3. In case of neglect occasioned by sickness or absence of an officer of any corporation, joint stock company or association required to make said return, or for other sufficient reason, the state tax commission may allow such further time for making and delivering such return as it may deem necessary, not to exceed thirty days.

4. If any of the corporations, joint stock companies or associations aforesaid shall fail or refuse to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association shall be liable to a penalty of not less than one hundred dollars and not to exceed five thousand dollars at the discretion of the court.

5. Any officer of a corporation, joint stock company or association required by law to make, render, sign or verify any return who makes any false or fraudulent return or statement, with intent to defeat or evade the assessment required by this act to be made, shall upon conviction be fined not to exceed five hundred dollars or be imprisoned not to exceed one year, or both, at the discretion of the court, with the cost of prosecution.

Incorrect returns by individuals; penalty for frauds and refusal to make returns. Sec. 12. 1. Whenever the assessor of

incomes or the county board of review herein provided for shall have reason to believe that in any one or more of the three next previous years the returns made by any person other than a corporation, joint stock company, or association are incorrect or are made with false or fraudulent intent, or when any such person has failed or refused to make a return as required by law, the assessor or county board of review shall make such additions or corrections to the next assessment as he or they shall deem true and just. Whenever the assessor or the county board of review shall so increase or make subject to tax any income he or they shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any person other than a corporation, joint stock company or association is made with false or fraudulent intent, or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate.

3. Any person other than a corporation, joint stock company or association who fails or refuses to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return shall upon conviction be fined not to exceed five hundred dollars, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the cost of prosecution.

Hearing of grievances. Sec. 13. Any corporation, joint stock company or association subject to assessment by the state tax commission, feeling aggrieved by the decision of said commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission.

County board of review. Sec. 14. The state tax commission shall appoint three resident taxpayers of each county to serve as a county board of review, and shall fix their compensation, which shall not be more than ten dollars per day, and shall be audited and paid in the same manner as the salary of assessors under this act is paid.

Clerk; record of proceedings. Sec. 15. The county clerk

shall be clerk of such board, and shall keep an accurate record of all proceedings thereof, including a correct record of all changes in the assessment rolls made by the board. The county clerk shall take full minutes of all evidence given before the board; provided, however, that the board, with the approval of the assessor of incomes, may in cases where they deem it advisable, employ a stenographic reporter to take such evidence in shorthand, and extend the same in typewritten form. The county clerk shall preserve in his office a record of all such proceedings, minutes and evidence taken, and all documentary evidence offered. The stenographer shall be paid by the state, but the board may, in its discretion, charge the expenses to the complaining party or parties appearing before the board.

Meetings of board; quorum; proceedings in general. Sec. 16. 1. The county board of review of each county, constituting an assessment district, shall meet annually on the last Monday of July at ten o'clock A. M. at the courthouse in said county to hear complaints and to review the assessments of income made by the assessor. A majority shall constitute a quorum.

2. In assessment districts composed of more than one county the board of review of the county designated by the assessor of incomes shall meet as provided above and the board of review of each remaining county of the district shall meet as soon thereafter as is possible for the assessor of incomes to be present. The date of such meeting shall be fixed by the assessor of incomes.

3. Notice of the annual meeting of each county board of review shall be published in a newspaper of the county at least one week previous to such meeting.

4. The board may adjourn from day to day, and from time to time, until its business is completed, but no adjournment other than from day to day shall be had except upon written request and for satisfactory cause shown.

5. Attendance of witnesses and the production of books and papers before said board may be compelled by subpoena, issued by the clerk thereof, a justice of the peace or a court commissioner.

Hearing and determination. Sec. 17. 1. The board shall hear and examine, and permit the assessor to examine, any aggrieved or other person upon oath who shall appear before it

in relation to any assessment or omission of income, and may increase or lessen the amount of any income assessed, if satisfied from the evidence submitted and the statements of the assessor, that such change should be made.

The board shall not increase any assessments, nor assess any income not on the roll without notice in writing to the person liable for payment of the tax thereon, or his agent, if either be a resident of the county, of such intention in time to appear and be heard before the board in relation thereto.

Exclusive original jurisdiction. Sec. 18. No person subject to assessment by the county assessor shall be allowed in any action or proceeding to question any assessment of income, unless objections thereto shall first have been presented to the county board of review in good faith and full disclosure made under oath of any and all income of such party liable to assessment.

Appeal and review. Sec. 19. 1. Any person dissatisfied with any determination of the county board of review may appeal within twenty days to the state tax commission, to whom a copy of the record of the board shall be certified, together with all evidence or a copy thereof, relating to such assessment.

2. The tax commission shall review such assessments from the record thus submitted and shall make necessary corrections and certify its conclusion to the county clerk, who shall duly notify the person liable for the tax and enter upon the assessment roll any change by the commission.

Assessment of corporations and tax computation certified to county clerk; report of tax commission. Sec. 20. 1. The state tax commission shall complete the assessment of income for each corporation, joint stock company, and association, on or before the fifteenth day of October in each year, and compute the tax thereon, and shall thereupon certify to each county clerk a statement of the assessment of each corporation, joint stock company and association in his county and the amount of tax levied against each.

2. The state tax commission shall submit in their biennial report the amount of income tax collected for each county in the state, and shall designate the several general classes of property from which the incomes were received, the cost to the state and each county for the administration of the law, and all such

facts as shall be required to give a definite understanding of the financial operations of the law.

Computation of tax on individuals; certified to clerks. Sec. 21. The tax upon the income of persons other than corporations, joint stock companies and associations shall be computed by the county clerk, assisted by the assessor of incomes and said clerk shall on or before November 1, certify to each town, city and village clerk the names of all persons whose incomes are assessed in his own town, city or village, and the amount of tax levied against each such person, and such amount shall be entered by the town, city and village clerks in a separate column designated "Income Tax" upon the tax roll of the year, and shall be collected and paid as personal property taxes are now collected and paid.

Situs of taxation. Sec. 22. The place at which the income tax herein provided for shall be assessed, levied and collected, shall be determined as follows:

(1) In their return for purposes of assessment persons deriving incomes from within and without the state, or from more than one political subdivision of the state, shall make a separate accounting of the income derived from without the state, and from each political subdivision of the state in such form and manner as the tax commission may prescribe.

(2) The entire taxable income of every person deriving income from within and without the state or from within different political subdivisions of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper exemptions and the proper rate of taxation. The taxable income so computed shall be assessed, and taxes at such rate shall be paid, in the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income derived from without the state when taxable as having been derived from the town, city or village in which said person resides.

(3) Income derived by nonresidents of the state from sources within the state or within its jurisdiction, shall be separately assessed and taxed in the town, city or village from which such income is derived, at a rate determined by the total income derived from within any single town, city or village.

(4) All laws not in conflict with the provisions of this act

regulating the time, place and manner of payment of taxes on personal property, the collection thereof by action, distress or otherwise and the return of personal property taxes unpaid, shall apply to the income tax herein provided for.

Apportionment of revenue. Sec. 23. The revenue derived from such income tax shall be divided as follows, to wit: Ten per cent to the state, twenty per cent to the county and seventy per cent to the town, city or village in which the tax was assessed, levied and collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

Penalty for divulging information. Sec. 24. 1. No commissioner, assessor of incomes, deputy, member of a county board of review or any other officer, agent, clerk or employe shall divulge or make known to any person in any manner except as provided by law any information whatsoever obtained directly or indirectly by him in the discharge of his duties, or permit any income return or copy thereof or any paper or book so obtained to be seen or examined by any person except as provided by law.

2. Any officer, agent, clerk or employe violating any of the provisions of this section shall upon conviction thereof be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the state prison for not more than two years, at the discretion of the court.

3. Such officer, agent, clerk or employe upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of three years thereafter.

4. Nothing herein shall be construed as preventing the assessment roll, the tax roll, and all proceedings had before the county board of review and all evidence taken at such hearing from being open to public inspection at such times and under such conditions as the state tax commission may direct.

Duties of county supervisor conferred on assessor of incomes. Sec. 25. 1. On and after the first Monday in January, 1912, the office of county supervisor of assessment is hereby abolished.

2. The assessor of incomes shall on and after the first Mon-

day of January, 1912 in addition to the duties and powers herein imposed and conferred upon him, perform all the duties and possess all the powers heretofore imposed and conferred by law upon the said county supervisor of assessment. The assessor of incomes shall be under the direction and control of the state tax commission and shall make such reports to the commission to the county board of review and the county board of supervisors, and perform such other duties as the commission shall direct.

Personal property and bank tax credited. Sec. 26. Any person who shall have paid a tax upon his personal property during any year shall be permitted to present the receipt therefor to, and have the same accepted by, the tax collector to its full amount in the payment of taxes due upon the income of such person during said year. Any bank which has paid taxes during any year upon its shares assessed to the individual stockholders thereof shall be entitled, under the provisions of this section, to present the receipt therefor, and have the same accepted by the tax collector to its full amount in the payment of taxes due upon the income of such bank during said year.

Taxation for 1911 not affected. Sec. 27. Nothing contained in this act shall be construed to affect the assessments or collection of taxes assessed in the year 1911 or prior thereto, under present laws, nor to limit the power of assessors and boards of review relative to correcting assessment rolls, placing omitted property thereon, and re-assessing property whenever such correction, insertion of omitted property, or re-assessment might be made under the laws as they now exist.

Rules and regulations. Sec. 28. The state tax commission is hereby empowered to make such rules and regulations as it shall deem necessary in order to carry out foregoing provisions.

Employment of clerks and specialists. Sec. 29. The state tax commission is hereby authorized to employ such clerks and specialists as are necessary to carry into effective operation this act.

Appropriations. Sec. 30. There is hereby appropriated from the general fund of the state, out of any money in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this act.

PART VI.

IMPORTANT BRITISH INCOME TAX LAWS.

THE INCOME TAX (FOREIGN DIVIDENDS) ACT, 1842.

5 & 6 Vict. c. 80.

[5th August, 1842.]

An Act to grant Relief from the Duties of Assessed Taxes in certain cases, and to provide for the Assessing and Charging the Property Tax on Dividends payable out of the Revenue of Foreign States.

2. And whereas by an Act passed in the present session of Parliament for granting to her Majesty duties on profits arising from property, professions, trades, and offices, it is enacted, that the commissioners for special purposes in the said Act mentioned shall be commissioners, under the regulations of the said Act, for the purpose of assessing and charging the duties thereby made payable on all dividends and shares of annuities payable out of the revenue of any foreign state to any persons, corporations, companies, or societies in Great Britain which shall have been or shall be intrusted for such payment to any person, corporation, company, or society whatever in Great Britain, other than and except the several companies in the said last-recited Act mentioned, and which assessments are thereby directed to be made under and subject to the rules, regulations, and exemptions contained in Schedule (C.) of the same Act: And whereas it is expedient to provide

more effectually for carrying into execution the powers and provisions of the said Act, so far as the same relate to the assessing and charging of the said duties on such dividends and shares of annuities as aforesaid: be it therefore enacted, that all persons intrusted with the payment of annuities, or any dividends or shares of annuities, payable out of the revenue of any foreign state to any persons, corporations, companies, or societies in Great Britain or acting therein as agents or in any other character, shall, without further notice or demand thereof, deliver or cause to be delivered into the head office for stamps and taxes in England an account in writing containing their names and residences, and a description of the annuities, dividends, and shares intrusted to them for payment, within one calendar month after the same shall have been required by public notice in the London Gazette, and shall also, on demand by the inspector authorized for that purpose by the commissioners of stamps and taxes, deliver or cause to be delivered to him, for the use of the said commissioners for special purposes, true and perfect accounts of the amount of annuities, dividends, and shares payable by them respectively; and the said commissioners for special purposes shall make an assessment thereon under Schedule (C.) of the said last-recited Act, at the rate therein prescribed, subject to diminution on occasion of any exemptions to be allowed by the said commissioners for special purposes, giving notice of the amount of such assessments to the respective persons intrusted with such payments, who shall respectively pay the duty on the said annuities, dividends, and shares, on behalf of the persons, corporations, and companies, entitled unto the same, out of the moneys in their hands; and they shall be acquitted of such payments in like manner, and the like proceedings in all respects shall be had under the said commissioners for special purposes, as are by the said last-recited Act directed in respect of annuities payable out of the public revenue of the United Kingdom: Provided always, that the persons intrusted with such payment shall from time to time pay the duty so assessed thereon into the Bank of England, to the account to be kept at the Bank of England with the receiver general of stamps and taxes, as directed by the said Act, and shall be answerable for such payment, and which duty so assessed shall, in default of such payment, be recoverable against

the persons respectively intrusted with such payments, as other duties charged on the parties may be recovered against them; and if any person intrusted with the payment of any such last-mentioned annuities, or any dividends or shares thereof, in the manner herein mentioned, or acting therein as agent or in any other character, shall neglect or refuse to deliver an account of his name and residence in the manner herein directed, or, after demand, shall neglect or refuse to deliver an account as aforesaid of the amount of such annuities, dividends, and shares as he is intrusted with the payment of, or in the payment of which he shall act as agent or in any other character, he shall forfeit the sum of one hundred pounds, over and above the duty chargeable on such annuities, shares, or dividends.

3. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

THE INCOME TAX ACT, 1853.

16 & 17 Vict. c. 34.

[June 28th, 1853.]

An Act for granting to her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices.

1. From and after the fifth day of April one thousand eight hundred and fifty-three, there shall be charged, raised, levied, collected, and paid yearly unto and for the use of her Majesty, her heirs and successors, during the respective terms hereinafter limited, the several rates and duties hereinafter mentioned; (that is to say,)

For and in respect of the property in any lands, tenements, or hereditaments in the United Kingdom, and for and in respect of every annuity, pension, or stipend payable by her Majesty, or out of the public revenue of the United Kingdom, and for and in respect of all interest of money, annuities, dividends, and shares of annuities, payable to any person or persons, bodies politic or corporate, companies or societies, whether corporate or not corporate, and for and in respect of the annual profits or gains arising or accruing to any person or persons whatever resi-

dent in the United Kingdom, from any kind of property whatever, whether situate in the United Kingdom or elsewhere, or from any annuities, allowances, or stipends, or from any profession, trade, or vocation, whether the same shall be respectively exercised in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person or persons not resident within the United Kingdom from any property whatever in the United Kingdom, or from any trade, profession, or vocation exercised in the United Kingdom, for every twenty shillings of the annual value or amount thereof,—

	£	s.	d.
During the term of two years from the fifth day of April one thousand eight hundred and fifty-three, the yearly duty of – – – – – – –	0	0	7
And during the further term of two years from the fifth day of April one thousand eight hundred and fifty-five, the yearly duty of – – – – –	0	0	6
And during the further term of three years from the fifth day of April one thousand eight hundred and fifty-seven, the yearly duty of – –	0	0	5

And for and in respect of the occupation of such lands, tenements, or hereditaments (other than a dwelling-house occupied by a tenant distinct from a farm of lands), for every twenty shillings of the annual value thereof,—

	In England.			In Scotland and Ireland.		
	£	s.	d.	£	s.	d.
During the said first-mentioned term of two years, the yearly duty of – – – – – – – –	0	0	3½	0	0	2½
And during the said further term of two years, the yearly duty of	0	0	3	0	0	2¼
And during the said further term of three years, the yearly duty of – – – – – – – – – –	0	0	2½	0	0	1¾

2. For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting

such duties respectively, the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several Schedules contained in this Act, and marked respectively (A.), (B.), (C.), (D.), and (E.), and to be charged under such respective Schedules; (that is to say,)

SCHEDULE (A.).

For and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, and to be charged for every twenty shillings of the annual value thereof:

SCHEDULE (B.).

For and in respect of the occupation of all such lands, tenements, hereditaments, and heritages as aforesaid, and to be charged for every twenty shillings of the annual value thereof.

SCHEDULE (C.).

For and in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable to any person, body politic or corporate, company or society, whether corporate or not corporate, out of any public revenue, and to be charged for every twenty shillings of the annual amount thereof:

SCHEDULE (D.).

For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for

every twenty shillings of the annual amount of such profits and gains:

And for and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of her Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment, or vocation exercised within the United Kingdom, and to be charged for every twenty shillings of the annual amount of such profits and gains:

And for and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other Schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof:

SCHEDULE (E.).

For and in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by her Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under the said Schedule (C.), and to be charged for every twenty shillings of the annual amount thereof.

3. Upon every fractional part of twenty shillings of the annual value or amount of the property, profits, and gains aforesaid, the like proportion of duty at the respective rates aforesaid shall be charged: Provided that no duty shall be charged of a lower denomination than one penny.

4. The duties by this Act granted shall be under the direction and management of the Commissioners of Inland Revenue for the time being, who are hereby empowered to employ all such officers or other persons, and to do all such other acts and things as may be deemed necessary or expedient for the raising, collecting, receiving, and accounting for the said duties, and for putting this Act into execution in and throughout the United Kingdom, in the like and in as full and ample a manner as they are authorized to do with relation to any other duties under their care and management.

5. The said duties hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the Act passed in the session of Parliament held in the fifth and

sixth years of her Majesty, chapter thirty-five, and of the several Acts therein mentioned or referred to, and also of any Act or Acts subsequently passed explaining, altering, amending, or continuing the said first-mentioned Act; and for this purpose all the said several Acts shall be revived, and shall be deemed to have been and to be continued in force from the fifth day of April one thousand eight hundred and fifty-three; and all such of the said regulations and provisions as have been enacted by the said Acts, or any of them, with reference to Great Britain or England, shall (so far as the same are or may be applicable consistently with the express provisions of this Act) be and the same are hereby extended to Ireland; and all powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things contained in or enacted by the said several Acts before recited or referred to, or any of them, shall notwithstanding that the same may have expired, severally and respectively be and become in full force and effect with respect to the duties hereby granted, and shall in all cases not expressly provided for by this Act, and so far as the same are not superseded by and are consistent with the express provisions of this Act, severally and respectively be duly observed, applied, practised, and put in execution throughout the respective parts of the United Kingdom for raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and for auditing the accounts thereof, and otherwise relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things were particularly repeated and re-enacted in the body of this Act with reference to the said duties hereby granted, and respectively applied to the several parts of the United Kingdom as aforesaid; and wherever in the said Acts, or any of them, the term "England" is used or mentioned, the same, in relation to the duties granted by this Act, shall be deemed to extend to and to mean also Ireland; and in like manner the term "Great Britain" shall be read as and deemed and construed to mean the United Kingdom; and where in the provisions of the said Acts her Majesty's Court of Exchequer at Westminster, or any of her Majesty's Courts of Record at Westminster, is or are mentioned or referred to, such provisions shall, with reference to the duties under this Act to be assessed

in Ireland, be construed and take effect as if her Majesty's Court of Exchequer at Dublin, or her Majesty's Superior Courts of Record at Dublin, were mentioned or referred to instead of the said respective courts at Westminster; and the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, and the Acts explaining, altering, amending, and continuing the same, and this Act, shall be construed and read together as one Act.

6. Provided always, that nothing in the said first-mentioned Act contained shall be deemed or construed to extend to exempt any person, although not resident in any part of the United Kingdom, from the duties granted by this Act in respect of the profits or gains received from or out of any possessions or securities in Ireland, or to exempt any person resident in any part of the United Kingdom from the said duties in respect of the profits or gains received from or out of any possession or securities in any other of her Majesty's dominions, or any foreign possessions or securities.

7. Provided also, that the duties in respect of interest arising from securities in Ireland, and in respect of possessions in Ireland, which by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, are directed to be charged and assessed respectively according to certain rules prescribed for charging the duties under the head respectively of "Fourth Case" and "Fifth Case" of Schedule (D.), and in section one hundred and six of the said Act, shall under this Act be charged and assessed in Ireland in the same manner, and under the same Schedules, rules, and regulations respectively, as the duties on securities and possessions of the like nature in Great Britain are directed to be charged, except so far as such Schedules, rules, and regulations are altered or modified in regard to the assessing or charging of duties in Ireland by the express provisions of this Act.

8. Provided also, that notwithstanding anything in the said Act of the fifth and sixth years of her Majesty contained, persons holding offices in Ireland and residing in Great Britain, and persons usually residing in Ireland and serving in Parliament, shall be chargeable to the duties by this Act granted, without regard to any exemption from the duties of assessed taxes; and that this Act shall extend to charge persons resident in

Ireland with the duties under Schedule (E.) in respect of public offices or employments, although the duties thereof are necessarily and permanently performed in Ireland.

9. The several persons chosen or appointed under the provisions of the said first-mentioned Act to be respectively commissioners for the general purposes of the said Act, and to be respectively additional or other commissioners, being respectively duly qualified in that behalf, and also the several persons appointed to be and who on the fifth day of April one thousand eight hundred and fifty-three were commissioners for the special purposes of the said Act, shall, without any further or other election, nomination, or appointment, respectively, be such commissioners as aforesaid for the like purposes under this Act; and wherever in the said Act, or in any Act relating to the duties thereby granted, mention is made of the commissioners of stamps and taxes, the same in relation to the duties granted by this Act shall be construed and deemed to designate the Commissioners of Inland Revenue: Provided that no persons shall be commissioners to supply vacancies amongst the said commissioners for general purposes except such persons as shall after the passing of this Act be chosen for that purpose in the manner provided by the said first-mentioned Act.

Interest, Dividends, etc., From Foreign Companies.

10. The provision made by the Act passed in the said session of the fifth and sixth years of her Majesty, chapter eighty, section two, for the assessing and charging the duties on dividends and shares of annuities payable out of the revenue of any foreign, state, shall be and the same is hereby extended to the assessing and charging of the duties granted by this Act, as well on such dividends and shares of annuities as aforesaid as on all interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, or shares of any foreign company, society, adventure, or concern, or in respect of any securities given by or on account of any such company, society, adventure, or concern, and which said interest, dividends, or annual payments have been or shall be intrusted to any person in the United Kingdom for payment to any persons, corporations, companies, or societies in the United Kingdom, and all persons in-

trusted with the payment of any such interest, dividends, or other annual payments as aforesaid in the United Kingdom, or acting therein as agents or in any other character, shall and they are hereby required to do and perform all such acts, matters, and things, in order to the assessing and charging and paying of the said duties on all such interest, dividends, or other annual payments as aforesaid, and under and subject to the like penalty or other liability for any neglect, refusal, or default in that behalf, as by the said Act of the fifth and sixth years of her Majesty, chapter eighty, persons intrusted with the payment of annuities on any dividends or shares of annuities are required to do and perform, or are subject or liable to for any similar neglect, refusal, or default; and the assessments of the duties on all such interest, dividends, and other annual payments as aforesaid shall be made by the commissioners for special purposes under Schedule (D.) of this Act, and the said commissioners shall do and perform all such acts, matters, and things in relation to such assessments as by the said Act, chapter eighty, they are required to do or perform in relation to any assessment under the said last-mentioned Act.

PROVISIONS RELATING TO IRELAND.

As to the Bank of Ireland.

11. The governor and directors of the company of the Bank of Ireland shall be commissioners for executing this Act, for the purpose of assessing and charging the duties hereby granted in respect of all annuities, dividends and shares of annuities payable by the governor and company of the Bank of Ireland out of the public revenue of the United Kingdom to any persons, corporations, or companies whatever, and in respect of all profits and gains of the said company chargeable under Schedule (D.) of this Act, and in respect of all other dividends, interests, annuities, pensions, and salaries payable by the said company, and also in respect of all other profits chargeable with duty under this Act and arising within any office or department under the management or control of the said governor and company; and the said last-mentioned commissioners shall have, use, and exercise all the powers and authorities of commission-

ers for the general purposes of this Act, so far as the same relate to the said duties to be assessed and charged by the said governor and directors, and shall make their assessments of the said duties, under and subject to the rules, regulations and exemptions contained in the said first-mentioned Act in relation to the said duties respectively: Provided always, that the duties by this Act granted shall extend to and be payable upon all annuities, dividends, and share of annuities payable in Ireland out of the revenue of the United Kingdom to or for the use or benefit of any person, whether resident in Ireland or elsewhere.

IRELAND—SCHEDS. (A.) AND (B.)

12. In order to the assessing of the duties chargeable under the respective Schedules (A.) and (B.) of this Act in Ireland, the clerk of the board of guardians of every poor law union in Ireland, or the person acting as such clerk, shall, within one month after the passing of this Act, and between the fifth day of April and the first day of June in every succeeding year, transmit to the Commissioners of Inland Revenue, at their head office in Dublin, true copies of the last rates made by such guardians for the relief of the poor in such union, and in every electoral division thereof, and the Collector General of rates in the city of Dublin shall, in like manner and within the same period in each year, transmit to the said commissioners true copies of the last rates made for the relief of the destitute poor in the several electoral divisions or parts thereof in which he is by law authorized to make and declare such rates; and the Commissioners of Inland Revenue shall pay to the said clerk and collector respectively the cost and expense of making all such copies, not exceeding the rate of two shillings and sixpence for every one hundred ratings; and if any such clerk or any person acting as such clerk or such collector shall in any year neglect to transmit such copies in compliance with this enactment he shall for every such neglect forfeit the sum of fifty pounds.

13. The duties chargeable in Ireland under the respective Schedules (A.) and (B.) of this Act shall be charged and assessed by a poundage rate upon the annual value of all tenements and rateable hereditaments, according to the respective surveys and valuations made or to be made and from time to

time in force for the purposes of the rates for the relief of the poor in Ireland; and the assessment of the said duties in Ireland chargeable under the said Schedule (A.) shall be made upon the landlord or immediate lessor of such tenements or rateable hereditaments, or if it shall appear to the commissioners for special purposes to be necessary or proper, the said assessment shall be made upon such person as the rate for the relief of the poor shall be made upon in respect of any such property under the provisions of the Acts in that behalf; and the assessment of the said duties chargeable under the said Schedule (B.) shall be made upon the occupier of such property: Provided always that if upon the appeal, as hereinafter mentioned, of any person deeming himself aggrieved by any such assessment, it shall be proved to the satisfaction of the commissioners, assistant barrister, chairman, or recorder, by whom such appeal shall be heard or re-heard, as the case may be, that such assessment is made upon an amount or value exceeding the annual rent at which the property in respect whereof such assessment is made is worth to be let from year to year, the person hearing or rehearing such appeal shall give relief by reducing and abating such assessment, and charging the duties on the amount of such annual value as aforesaid, notwithstanding that the same may be less than the annual value of the premises according to any such survey or valuation as aforesaid; and if such annual value at which such property is worth to be let as aforesaid shall exceed the actual rent payable yearly by the tenant or occupier of such premises, the landlord or immediate lessor shall be assessed under Schedule (A.) upon the amount of such actual rent only, and the tenant or occupier shall be assessed under the said Schedule (A.) on the difference between that amount and the amount of such last-mentioned annual value, subject nevertheless to any claim for exemption which the parties respectively may be entitled to: Provided also that where any person receiving rent in respect of any hereditament in Ireland exempt from being rated to the relief of the poor is liable to be rated in respect of such rent to the extent of one-half the poundage of any poor rate, the said duties in Ireland chargeable under the said Schedule (A.) shall be charged and assessed upon such person by a poundage rate upon the full amount of such rent.

14. Provided also, that if in any case it appear to the Com-

missioners of Inland Revenue that any such valuation as aforesaid for the time being in force is not correct (having reference to the principles according to which the same ought by law to have been made), with respect to all or any of the tenements or rateable hereditaments included therein, it shall be lawful for such commissioners to direct the commissioner of valuation to make or cause to be made a re-valuation of the tenements or hereditaments with respect to which the said valuation is incorrect; and such commissioner of valuation shall forthwith, with all convenient speed, make or cause to be made such re-valuation accordingly, and sign the same, and transmit it to the Commissioners of Inland Revenue; and such re-valuation shall be made according to the principles or rules according to which such incorrect valuation ought by law to have been made; and the duties chargeable under the said Schedules (A.) and (B.) shall, after such re-valuation, be charged and assessed according thereto; provided that if any person assessed to the last-mentioned duties according to such re-valuation deem himself aggrieved thereby, it shall be lawful for him to appeal against such assessment on the ground of the incorrectness of such re-valuation, and upon such appeal it shall be lawful for the commissioners, assistant barrister, chairman, or recorder hearing or re-hearing such appeal to alter as well such re-valuation as the assessment thereon, and make such order in relation thereto as they or he may think fit.

15. In assessing in Ireland the duties chargeable under Schedule (A.) of this Act on the landlord or immediate lessor, in every case where the amount or annual value on which the assessment is made on him is not less than the annual rent reserved or payable to him for the premises in respect of which the assessment is made, an allowance or abatement of a proportionate part of the duty shall be made in respect of the amount of the poor rates which such landlord or lessor shall have paid or borne for the same premises in the year preceding; and if the amount or annual value on which such assessment as aforesaid is made shall be less than the said rent, then such allowance or abatement as aforesaid shall be made only in respect of so much as the amount of the said poor rate added to the sum on which the assessment is made shall exceed the actual rent.

16. All assessments of the said duties under the said Sched-

ules (A.) and (B.), in Ireland, shall be made by surveyors of taxes or other officers of inland revenue acting in that behalf under the directions of the Commissioners of Inland Revenue; and every such assessment shall be made for and comprise the respective premises situate within a union, or an electoral division, or such other district as the said last-mentioned commissioners shall direct; and the same shall be signed by two of the commissioners for special purposes, who shall cause duplicates thereof, together with their warrants for the collecting and levying of the sums thereby assessed, to be delivered to such person or persons as they shall appoint to be collectors of such assessments.

17. Every such assessment in Ireland of the duties under the said Schedules (A.) and (B.) of this Act may be collected, levied, and recovered by distress by the person appointed in manner aforesaid to be the collector thereof from the person assessed, or from the occupier of the property assessed, or may be levied upon the particular premises in respect of which the assessment is made; and all goods and chattels, to whomsoever the same shall belong, found on such premises in respect of which any assessment is made of the said duties under this Act, shall be liable to be distrained and sold for the recovery of the said duties; or such duties as aforesaid, or any arrears thereof, may be levied and recovered in the same manner as other duties assessed in Ireland under this Act may be levied and recovered: Provided always, that the duty assessed under the said Schedule (A.) upon or in respect of any tenement or hereditament may be collected, recovered, and levied by the said collector from the landlord or immediate lessor of the premises assessed, whether he be named in the assessment or not; and to that end such collector is hereby authorised and empowered to use, exercise, and put in force against such landlord or immediate lessor all or any of the remedies, ways, and means provided by an Act of the first and second years of her Majesty, chapter fifty-six, and an Act of the sixth and seventh years of her Majesty, chapter ninety-two, or either of the said Acts, by which any rate made for the relief of the destitute poor in Ireland may be collected, recovered, or levied from any immediate lessor primarily liable to the payment of rates for premises the occupier of which is exempted from such payment: Provided also, that

where any proceeding for the recovery of any such rate is by law required to be had or taken in the name of the guardians of a poor law union, or by the direction or with the consent of such guardians or of the Poor Law Commissioners, or by or with any other direction or consent, the like proceeding for the recovery of the said duties under this Act may be had and taken by and in the name of such collector as aforesaid, and without any such direction or consent; provided that where any assessment under the said Schedule (A.) shall have been made upon the tenant or occupier of the premises assessed, the landlord or immediate lessor shall be liable to be proceeded against in manner aforesaid only in default of payment of such assessment by the said tenant or occupier, and for the recovery of so much only of the duty assessed as shall be chargeable in respect of the rent payable yearly to such landlord or immediate lessor for the premises assessed.

18. When any landlord or immediate lessor of any tenement or hereditament in Ireland assessed to the duty chargeable under Schedule (A.) of this Act shall have paid such duty, and shall afterwards prove to the satisfaction of the commissioners for special purposes that the rent due or payable to him in respect of such tenement or hereditament for the period for which the said duty was assessed, or any portion of such rent, has been wholly and irrecoverably lost by reason of the bankruptcy, insolvency, or absconding of the tenant or occupier by whom such rent was payable, or by the fraudulent assignment or removal of his goods, or by reason of such tenement or hereditament being left waste and unoccupied, then and in such case the said landlord or lessor shall be entitled to be repaid such proportion of the said duty as he shall have paid in respect of the rent so lost; and the said commissioners shall order and direct the repayment of such proportion of duty in like manner as by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, they are authorized to order and direct the repayment of duty in other cases; provided that such landlord or lessor shall make his claim for such repayment to the said commissioners within the period of six calendar months after the expiration of the year for which the said duty was assessed.

19. Every person having in his custody or possession any survey or valuation on which the rates for any union or electoral

division shall be assessed or made, or any rate or assessment made under the provisions of the Acts for the relief of the poor in Ireland, or any of them, shall, at the request of any inspector, surveyor, or other officer acting in the execution of this Act in Ireland, produce and show every such survey, valuation, rate, and assessment to such inspector, surveyor, or other officer, and permit him to inspect the same, and to take copies thereof or extracts therefrom, without paying anything for the same; and in case the person having the custody or possession of any such survey, valuation, rate, or assessment shall, on any such request as aforesaid, refuse to produce the same to such inspector, surveyor, or other officer, or to permit him to inspect the same, or to take copies thereof or such extracts as he may think fit to take therefrom, such person shall, for every such refusal, forfeit the sum of fifty pounds.

IRELAND—SCHEDS. (D.) AND (E.)

20. The assessments of the duties chargeable in Ireland under the several Schedules (D.) and (E.) of this Act shall be made by such surveyors of taxes or other officers of inland revenue as the Commissioners of Inland Revenue shall appoint in that behalf; and such assessment shall be allowed and signed by the commissioners for special purposes, who shall also appoint the times and places for hearing appeals against the same as hereinafter mentioned, and shall also cause due notice of every such assessment, and of the amount thereof, and of the time and place appointed for hearing any appeal against the same, to be given by some officer of Inland Revenue to every person so assessed.

IRELAND—APPEALS AGAINST ASSESSMENTS.

21. All appeals against assessments under this Act in Ireland shall be heard and determined by the said commissioners for special purposes, or any two of them, whose determination on any such appeal shall be final and conclusive, unless the person charged by the assessment shall think himself aggrieved by such determination, and shall require that such appeal shall be re-heard as herein-after provided; and where any person

charged by any such assessment as aforesaid, and to whom notice thereof and of the time and place appointed for hearing any appeal against the same shall be given as herein-before directed, shall neglect to appeal accordingly, such assessment shall also be conclusive; and such person shall be precluded from afterwards disputing or questioning the same.

22. If any person charged by an assessment in Ireland shall think himself aggrieved by the determination of the said commissioners for special purposes in any such appeal as aforesaid, it shall be lawful for him, on giving notice in writing to the inspector or surveyor within ten days after such determination, to require that such appeal shall be re-heard by the assistant barrister for the county or riding where such person shall have been assessed, or, in case he shall have been assessed in the county of Dublin, by the chairman of the sessions of the peace of such county, or, in case such person shall have been assessed in the city of Dublin, by the recorder of such city, or, in case such person shall have been assessed in the borough of Cork, by the recorder of such borough; and where any such appeal shall be so required to be reheard, any statement or schedule in the possession of the said commissioners for special purposes, returned to them for the purpose of such appeal, shall be transmitted by them to the assistant barrister, chairman, or recorder (as the case may require); and such assistant barrister, chairman, or recorder shall with all convenient speed rehear and determine such appeal, and shall take the oath or affirmation required to be taken by a commissioner for special purposes, and shall and may have and exercise the same powers and authorities in relation to the assessment appealed against, and the determination of the matter thereof, and in relation to all matters consequent thereon, as any two or more commissioners for special purposes might have and exercise; and his determination thereon shall be final and conclusive.

IRELAND—COLLECTION OF THE TAX, ETC.

23. After the respective times for hearing appeals against such assessments as aforesaid in Ireland, then as to all assessments against which appeals shall have been heard and determined, leaving any sum assessed or charged by any such assess-

ment, and as to all assessments against which no appeal shall have been made, the commissioners for special purposes shall cause duplicates thereof, together with warrants under the hands and seals of two of the said last-mentioned commissioners, to be delivered to such officers of inland revenue or other persons as shall be named in such warrants respectively, appointing such persons to be collectors of the duties and sums of money assessed and charged in such duplicates respectively, and requiring and empowering such collectors respectively to collect, demand, levy, and recover all such duties and sums of money.

24. The commissioners for special purposes acting in the execution in this Act in Ireland in relation to the allowing or signing of any such assessment as aforesaid, and to the hearing and determining of any appeal against the same, and to the making and signing of any duplicate thereof and any warrant for collecting and levying the duties and sums of money charged or assessed thereby, and also all inspectors and surveyors of taxes and other officers of inland revenue acting in Ireland in relation to the making of any such assessment or to the assessing or charging of any person therein or thereby, and also all persons named or appointed by the said commissioners to be respectively collectors of the said duties and sums of money in relation to the collecting, levying, distraining for, or otherwise recovering of the same, shall respectively be and are hereby invested with and shall have, use, and exercise all such and the like powers and authorities as any commissioners, either for general or special purposes, or any additional commissioners, and as any inspectors, surveyors, collectors, or other officers respectively have or are invested with, or can or may use or exercise in England in relation to the making or allowing of any assessment of duties under this Act, or to the assessing or charging of any person to such duties, or to the hearing or determining of any appeal against any such assessment, or to the collecting, levying, distraining for, or otherwise recovering of any such duties, so far as such powers and authorities or any of them are applicable or may be adapted to the performance of similar acts, matters, and things in Ireland.

25. Nothing herein contained shall be construed to make any union, electoral division, or place in Ireland in which any

assessment of any duties granted under this Act shall be made, answerable for the amount of duties charged in such place, nor for any neglect or default of the collector in demanding or collecting same; nor shall any re-assessment be made in Ireland upon any such place for any arrears or loss occasioned by any such neglect or default.

GENERAL PROVISIONS.

26. Where in any court or department of office there shall not be a sufficient number of officers proper to be appointed commissioners for executing this Act in relation to the duties on offices and employments of profit in such court or department of office, it shall be lawful for the Commissioners of her Majesty's Treasury to direct that the commissioners for any other department shall execute this Act in relation to the offices and employments of profits in any such court or department as aforesaid; and in default of a sufficient number of commissioners being appointed in any such court or department, and of such direction as aforesaid, the commissioners for general purposes in their respective districts in England and Scotland respectively, and the commissioners for special purposes in Ireland, shall respectively put this Act in execution in relation to the duties on offices and employments in any such court or department as aforesaid; and wherever in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, any power or direction is given to the commissioners for executing the said Act in relation to the duties on lands and tenements to execute the same in their several districts in relation to the duties on offices and employments of profit every such power and direction shall, in relation to the duties on offices and employments of profit in Ireland under this Act, be executed and carried out by the commissioners for special purposes.

27. It shall be lawful for any person who shall be duly assessed by the commissioners for special purposes for the duties on the profits and gains described in Schedule (D.) of this Act, for the first year for which the said duties are by this Act granted, to compound for the charging of the rate of duty which shall from time to time be payable under this Act for each and every year up to the fifth day of April one thousand eight hun-

dred and fifty-seven, on the same amount of such profits and gains in which he shall have been so assessed; and it shall also be lawful for any person who shall be duly assessed as aforesaid for the year commencing from the said last-mentioned day in like manner to compound for the charging of the rate of duty which shall then be payable for each and every remaining year of the period for which the said duties are by this Act granted, on the same amount of such profits and gains in which he shall have been so assessed as last aforesaid; and the consideration for every such composition shall be the payment, in each and every year of the said composition, of an addition to the said duties at and after the rate of one shilling for every twenty shillings of the said duties; and every such composition shall be entered into and made with the commissioners for special purposes, under and subject to the conditions, rules, and regulations (mutatis mutandis) contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in relation to compositions under the said last-mentioned Act, and the contract for the same shall be in such form as the Commissioners of Inland Revenue shall provide in that behalf.

28. The exemption granted by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, to persons whose respective incomes are less than one hundred and fifty pounds a year shall be limited and restricted under this Act to persons whose whole incomes from every source are less than one hundred pounds a year respectively: Provided always, that any person who shall be assessed or charged to any of the duties granted by this Act, or shall have paid the same either by deduction or otherwise, and who shall claim and prove, in the manner prescribed by the said Act, that his total income from every source, although amounting to one hundred pounds or upwards, is less than one hundred and fifty pounds a year for the year of the assessment of his profits or gains, shall be entitled to be relieved from so much of the said duties assessed upon or paid by him as shall exceed the rate of fivepence for every twenty shillings of his profits or gains, and such relief shall be given either by reduction or abatement of the assessment upon such person, or by the repayment to him of so much of the said excess as he shall have paid, or by both of those means, as the case may require; and in Ireland the income

rising from the occupation of lands, tenements, or hereditaments, by any person claiming such exemption or relief as aforesaid, shall be deemed to be one third of the annual value on which the same shall be chargeable under Schedule (B.) of this Act; and all the provisions, rules, and regulations contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five in relation to the exemption of persons whose incomes are less than one hundred and fifty pounds a year, and to the reduction or abatement of any assessment upon such persons, or to the repayment to them of any duties or sums of money, shall be observed and applied, so far as the same are applicable (mutatis mutandis), to the exemption of persons whose incomes are less than one hundred pounds a year, and to the claims for relief in the manner aforesaid to persons whose incomes are less than one hundred and fifty pounds a year.

29. Provided always, that in computing the income of any person for the purposes of this Act, such computation, so far as regards any rent derived from tenements or hereditaments in Ireland chargeable under Schedule (A), shall be made after allowing for the amount of poor rates chargeable on such rent by way of deduction or otherwise.

30. Where, on any application for relief or abatement of assessment in pursuance of the provisions contained respectively in section one hundred and thirty-three, and section one hundred and thirty-four of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, and in the third section of an Act of the fourteenth year of her Majesty's reign, chapter twelve, it shall be proved to the satisfaction of the commissioners to whom such application shall be made that the total amount of the income from every source of the person claiming such relief or abatement for the year for which such assessment was made was under one hundred pounds, such persons shall be entitled to the same relief and repayment respectively as by this Act and the said first-mentioned Act is provided in the case of persons claiming relief on the ground of their respective annual incomes being less than one hundred pounds a year.

31. In Ireland all claims of exemption by reason of the income of any person being under one hundred pounds a year,

and all claims for relief or reduction of assessment on the ground of such income being under one hundred and fifty pounds a year, and all claims for return or repayment of any duties on either of the grounds aforesaid, or under any other of the provisions of this Act, or of the Acts herein mentioned or referred to, shall be made in such manner and form as the Commissioners of Inland Revenue shall direct and provide in that behalf; and all such claims shall be made to and shall be adjudicated and finally determined by the commissioners for special purposes, or any two of them; provided that there shall be a like appeal as regards claims for exemptions in Ireland to the assistant barrister, chairman, or recorder (as the case may require) as is herein-before contained in reference to persons charged by an assessment and feeling aggrieved thereby.

32. In assessing and charging the duties under Schedule (A.) of this Act in respect of lands, tenements, or hereditaments subject to any rent-charge under the Act for the commutation of tithes in England, or any other rent-charge in lieu of tithe, it shall be lawful for the commissioners acting in the execution of this Act, if they shall think fit, on a due return of such rent-charge being made by the owner thereof in order to an assessment upon him, to charge and assess such owner in the assessment for the said parish with the duty under Schedule (A.) of this Act in respect of such rent-charge, deducting therefrom the amount of the parochial rates, taxes, and assessments charged upon or in respect of such rent-charge in the preceding year; and in the case of such assessment being made upon the owner of the said rent-charge, the amount of such rent-charge shall be allowed as a deduction in the assessment of the lands, tenements, and hereditaments on which the same is charged under the said Act for the commutation of tithes.

33. And whereas tithe rent-charge belonging to or held by ecclesiastical persons or bodies in Ireland is liable, in many cases, to heavy charges in respect of the tax payable to the ecclesiastical commissioners for Ireland, poor rates, the repayment of instalments for the building or repairing of glebe houses, or other charges: And whereas the deduction in respect of income tax under the provisions of this Act or the before-recited Act of the fifth and sixth years of her Majesty's reign, chapter thirty-five, made by any person paying tithe rent-charge to any

ecclesiastical person or body entitled to receive the same, would, under the provisions of this and the said Act, be the income tax upon the gross amount of such rent-charge; and it is expedient and just that such ecclesiastical persons or bodies should have the benefit of the allowances hereinafter mentioned out of such gross income, and of a proportionate remission of income tax: It shall be lawful for any ecclesiastical person or body to make application to the commissioners for special purposes, setting forth the deductions or charges to which his income has been subjected during the preceding year in respect of the ecclesiastical tax aforesaid, poor rates, and the other charges and matters of the like nature and description as those in respect of which the ecclesiastical commissioners are directed to make allowances or deductions in estimating the value of a benefice or other ecclesiastical property, with a view to its taxation, under the provisions of an Act passed in the third and fourth years of King William the Fourth, chapter thirty-seven; and such person or body, on proof to the satisfaction of the commissioners for special purposes that the income of such ecclesiastical person or body has been actually subjected to such charges or deductions, shall be entitled to have repaid to him by the Commissioners of Inland Revenue the difference between the amount of income tax calculated on the gross income of such ecclesiastical person or body and the amount to which such person or body would have been liable supposing the income tax to have been assessed upon his income after deducting such charges as aforesaid.

34. Provided also, that the deduction allowed under Schedule (A.), No. V., of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, for the repairs of collegiate churches and chapels and chancels of churches, or of any college or hall in any of the universities, by any ecclesiastical or collegiate body, rector, vicar, or other person bound to repair the same, shall, in respect of the duties under Schedule (A.) of this Act, be the amount of the sum so expended in the year preceding that in which the assessment is made, instead of an average of twenty-one years, as in the said Schedule (A.), No. V., is mentioned.

35. Where any occupier for the time being of any lands, tenements, or hereditaments, being tenant thereof, shall be

called upon and required to pay, and shall have paid, any sum or sums assessed upon or in respect of such lands, tenements, or hereditaments under the said Schedule (A.) of this Act, and which said sum or sums, or any portion thereof, ought, under the rules for charging the duties under the said Schedule, to have been paid or to be paid by any former tenant or occupier of the same lands, tenements, or hereditaments, or his executors or administrators, it shall be lawful for the said occupier for the time being to deduct and retain, from and out of any subsequent payment of rent to his landlord, the said sum or sums of money, or any portion thereof, which ought to have been or to be paid by such former tenant or occupier, or his executors or administrators as aforesaid: Provided that nothing in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, or in this Act contained shall extend to authorize the levying upon any such occupier for the time being any arrear of duty assessed under Schedule (A.) or Schedule (B.) of this Act, which ought to have been levied upon and ultimately paid and borne by any former occupier of the same lands, tenements, or hereditaments; and provided also, that nothing herein contained shall be deemed or construed to alter, prejudice, or affect any remedy given by the said rules for the recovering and levying of any such sum or sums, or any portion thereof, from or upon such former tenant or occupier, or his executors or administrators.

36. Any house or building let in different apartments or tenements, and occupied by two or more persons severally, shall nevertheless be charged to the duty under this Act as one entire house or tenement, and the assessment thereof shall be made on the landlord; but in default of payment by him the duty so charged and assessed may be levied on the occupier or occupiers respectively, and being paid by them or one of them shall be deducted and allowed out of the next or any subsequent payment on account of rent.

37. In charging the duty under Schedule (A.) of this Act in respect of lands, an allowance and deduction shall be made for the amount expended by the landlord or owner thereof on an average of the twenty-one preceding years in the making or repairing of sea walls or other embankments necessary for the preservation or protection of such lands against the encroach-

ment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on such lands by any public rate or assessment.

38. Where in any burgh in Scotland tolls commonly known by the name of customs are levied under the authority of any Act of Parliament or charter, and are applied and expended in such burgh in or towards defraying the expenses of paving, lighting, or cleansing the same, or of the police thereof, or in or towards discharging any other similar public burdens, the duty which may have been assessed and paid under this Act upon or in respect of such tolls shall, so far as regards so much of the said tolls as shall have been so expended as aforesaid, on due proof of all the necessary facts to the satisfaction of the commissioners for special purposes, be allowed and repaid under an order of the said commissioners, in like manner as in other cases where duties are allowed and repaid under the provisions in that behalf contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five.

39. Provided also, that notwithstanding anything in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, contained, all lands occupied for the growth of hops shall be charged to the duties under Schedule (B.) of this Act according to the general rules contained in Schedule (B.) of the said first-mentioned Act, and not by estimating the profits of such lands according to the rules contained in Schedule (D.) of the said Act.

40. Every person who shall be liable to the payment of any rent or any yearly interest of money, or any annuity or other annual payment, either as a charge on any property or as a personal debt or obligation by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorized, on making such payment, to deduct and retain thereout the amount of the rate of duty which at the time when such payment becomes due shall be payable under this Act, that is to say, sevenpence, sixpence, or fivepence, as the case may be, for every twenty shillings of such payment; and the person liable to such payment shall be acquitted and discharged of so much money as such deduction shall amount unto, as if the amount thereof had actually been paid unto the person to whom

such payment shall have been due and payable; and the person to whom such payment as aforesaid is to be made shall allow such deduction, upon the receipt of the residue of such money, under pain of forfeiting the sum of fifty pounds for any refusal so to do: Provided always, that no tenant or occupier of any property chargeable under Schedule (A.) of this Act shall be entitled to deduct or retain out of the rent thereof any greater sum than the amount of the duty which shall have been assessed and charged upon or in respect of such property, and actually paid by such tenant or occupier.

41. Provided always, that whenever any person liable to the said duties chargeable in Ireland under the said Schedule (A.) shall be entitled to retain a proportionate amount of such duties from any annual payment from which he is now by law entitled to deduct any sum on account of poor rates, he shall be entitled to retain such proportionate amount only upon the net sum payable by him after the allowance for poor rates.

42. And whereas under certain Acts of Parliament advances of public money to promote the improvement of lands have been made by way of loan, and in Ireland under an Act passed in the tenth year of her Majesty, chapter ten, and any Acts amending the same, and under an Act passed in the fifth and sixth years of her Majesty, chapter eighty-nine, for river drainage, and any Acts amending the same; and the repayment thereof has been secured by a rent-charge upon such lands to be paid for a term limited by the said Acts respectively, and by which the principal sums advanced will eventually be repaid with interest thereon; and it is just that provision should be made for deducting and allowing the duty charged by this Act in proportion to such interests on the payment of such rent-charge: It shall be lawful for any person paying any such rent-charge from time to time to deduct and retain thereout in respect of the duty chargeable under this Act one third part of the sum which the rate of such duty computed on such rent-charge will amount to, and no more; and the collectors and receivers of such rent-charges are hereby required to allow such deduction upon receipt of the residue of such rent-charge then due.

43. No action of ejectment for nonpayment of rent in Ireland shall be defeated on the ground that the person liable to pay such rent is entitled, under the provisions of this Act or

any Act incorporated therewith, to a deduction which would reduce the amount due by him under a year's rent.

44. The occupiers of lands, tenements, and hereditaments who shall make true and correct statements and returns, as required by the said Acts, of the annual value of all such lands, tenements, and hereditaments in their respective occupations, in order to an assessment of the duties chargeable thereon, under the respective Schedules (A.) and (B.) of this Act, for the year commencing from the fifth day of April one thousand eight hundred and fifty-three, shall not (unless they shall appeal against the continuance of the same assessment for any subsequent year) be required to make any further statements or returns of such annual value in respect of the same premises until the year one thousand eight hundred and fifty-seven; and in like manner such occupiers as aforesaid who shall make true and correct statements and returns in order to an assessment of the said duties for the year commencing from the fifth day of April one thousand eight hundred and fifty-seven shall not (unless they shall appeal against the continuance of such last mentioned assessment) be required to make any further statements or returns in respect of the same premises for any subsequent year of the period for which the said duties are by this Act granted.

45. The assessments to be made for the year commencing from the fifth day of April one thousand eight hundred and fifty-three of the duties chargeable under the respective Schedules (A.) and (B.) of this Act shall be and remain in force, and the several sums charged and assessed therein shall be collected and levied also, for the second year for which the same duties are by this Act granted, without altering the names of the parties charged, notwithstanding any change in the occupation of the premises in respect of which any such assessment may be made; and the same assessments reduced and abated in proportion to the reduced duties which will then be chargeable under this Act shall in like manner be collected and levied for the third and fourth years respectively; and in like manner also the assessments to be made of the said duties for the year commencing from the fifth day of April one thousand eight hundred and fifty seven shall be and remain in force, and the several sums charged and assessed therein for the said last-

mentioned year shall also be collected and levied for each and every remaining year of the period for which the said duties are by this Act granted: Provided always, that the continuance of any such assessment for the second or any subsequent year shall be subject to the conditions, rules, and regulations in that behalf contained in section eighty-seven of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in relation to the continuance of assessments made under that Act.

46. The relief granted by the third section of the said Act of the thirteenth and fourteenth years of her Majesty, chapter twelve, to persons occupying lands for the purposes of husbandry only, and obtaining their livelihood principally from husbandry, shall be extended and granted to every person occupying lands as tenant thereof for the purposes of husbandry only, although he may not obtain his livelihood principally from husbandry, as well as to every person occupying lands for the purposes aforesaid, being the owner thereof, and obtaining his livelihood principally as aforesaid.

47. Whereas by the eighty-first section of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, if upon appeal any dispute shall arise touching the annual value of any lands, tenements, or hereditaments, the commissioners are authorized, if they deem it necessary, to direct that a valuation thereof shall be taken and made by a person of skill to be named by the said commissioners: It shall be lawful for the appellant, as well as the said commissioners, upon any such appeal, to require that such valuation as aforesaid shall be made; and the said commissioners, on being required so to do by the appellant, as well as in cases where they may deem it necessary, shall name a person of skill to make such valuation; and upon such valuation being verified on the oath of the person making the same, the assessment shall be made according thereto.

48. The duty to be charged under Schedule (D.) in respect of professions, employments, or vocations not contained in any other Schedule of this Act shall be computed on a sum not less than the full amount of the balance of the profits, gains, and emoluments of such professions, employments, or vocations upon a fair and just average of three years, instead of the amount of such profits, gains, and emoluments within the preceding

year, as directed by the rules of Schedule (D.) in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, but subject in all other respects to the said last-mentioned rules.

49. Any friendly society legally established under any Act of Parliament relating to friendly societies (a), and which does not assure or grant to any individual any sum or annuity to an amount which would debar such society from the benefit of the exemption granted to friendly societies by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in respect of their stocks, dividends, and interest chargeable under Schedule (C.) of the said Act, shall be entitled to exemption under this Act, as well in respect of all their interest and other profits and gains chargeable under Schedule (D.) as in respect of their stocks, dividends, and interest chargeable under Schedule (C.) of this Act.

50. In ascertaining, estimating, or assessing the profits of any person chargeable under Schedule (D.) of this Act, either upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing to such person; and in the case of the bankruptcy or insolvency of the debtor, the amount of the dividend which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof, and the duty chargeable under the said Schedule shall be assessed and charged upon the estimated value of all such doubtful debts accordingly.

51. In assessing the duty chargeable under Schedule (E.) of this Act in respect of any public office or employment, where the person exercising the same is necessarily obliged to incur and defray out of the salary, fees, or emoluments of such office or employment the expenses of travelling in the performance of the duties thereof, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to lay out and expend money wholly, exclusively, and necessarily in the performance of the duties of his office or employment, it shall be lawful to deduct from the amount of the said salary, fees, and emoluments to be assessed under this Act the amount of all such expenses and disbursements necessarily incurred and defrayed in manner aforesaid. In assessing the duty chargeable under any Schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or

emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty charged and paid by such clergyman or minister shall, on due proof to the commissioners of such sum or sums having been expended as aforesaid, be repaid to such clergyman or minister.

53. Where any person who shall hold or exercise any public office or employment of profit shall at any time or times during or for or in respect of any year of assessment become entitled to any additional salary, fees, or emoluments beyond the amount for which any assessment may have been made upon him, or beyond the amount for which at the commencement of such year he may have been liable to be assessed, an additional or supplemental assessment shall from time to time, as often as the case shall require, be made upon such person for such additional salary, fees, or emoluments, so that he shall be assessed and charged for the full amount of the whole of the salary, fees, and emoluments which he shall receive or become entitled to at any time and from time to time during or for or in respect of the said year of assessment.

54. Any person who shall have made insurance on his life or on the life of his wife, or shall have contracted for any deferred annuity on his own life or on the life of his wife, in or with any insurance company which shall become registered under any Act to be passed in the present session of Parliament for that purpose, and which shall comply with the requirements of such Act, and any person who shall under any Act of Parliament be liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow or a provision to his children after his death, shall be entitled to deduct the amount of the annual premium paid by him for such insurance or contract, or the annual sum paid by him or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he shall be liable to be assessed under either of the Schedules (D.) or (E.) of this Act, or to have any as-

sessment which may be made upon him under either of the said Schedules reduced or abated by the deduction of the amount of the said annual premium from the amount of the profits or gains on which such assessment has been made; or if such person shall be assessed to duties under any of the Schedules contained in this Act, and shall have paid such assessment, or shall have paid or been charged with any of the said duties by deduction or otherwise, such person on claim made to the commissioners for special purposes, and on production to them of the receipt for such annual payment, and on proof of the facts to the satisfaction of the said commissioners, shall be entitled to have repaid to him such proportion of the said duties paid by such person as the amount of the said annual premium bears to the whole amount of his profits and gains on which he shall be chargeable under all or any of the Schedules of this Act: Provided always, that no such abatement, allowance, or repayment as aforesaid shall be made in respect of any such annual premium beyond one-sixth part of the whole amount of the profits and gains of such person so chargeable as aforesaid, nor shall any such deduction or abatement entitle any such person to claim total exemption or any relief from duty on the ground of his profits and gains being thereby reduced below one hundred or one hundred and fifty pounds, as the case may be.

55. Where any person assessed or charged to any of the duties under this Act shall have removed from the district within which the assessment or charge upon him was made without having appealed against such assessment or charge in such district, it shall be lawful for the Commissioners of Inland Revenue, if they shall think fit, on the application of such person, to authorize and empower the commissioners of the district to which such person shall have removed as aforesaid to hear and determine his appeal against such assessment or charge; and in every such case the said last-mentioned commissioners shall have full power and authority and they are hereby required to hear and determine such appeal accordingly; and any sum or sums from which such person may not be relieved on such appeal shall be recovered and levied in the same manner as if such appeal had been heard and determined by the commissioners of the district in which such assessment or charge was made.

56. If any person shall knowingly and wilfully aid, abet, or

assist, or incite or induce, any other person to make or deliver any false or fraudulent account, statement or declaration of or concerning any profits or gains chargeable under this Act, or of the yearly rent or value of any lands, tenements, or hereditaments, or of any matters or things affecting such rent or value, such persons so offending shall for every such offense forfeit the sum of fifty pounds.

57. In lieu of the allowances by the said Act of the fifth and sixth years of her present Majesty directed to be granted to the clerk of the respective commissioners for the due performance of the duties of his office, there shall be granted the following allowances respectively; (that is to say,) the clerk of the respective commissioners who shall duly perform the duties of his office within the respective times limited by law in that behalf, and shall have borne and sustained the incidental expenses mentioned in the said Act, shall, by warrant under the hands of the said commissioners, have and receive from the respective officers for receipt twopence in the pound on the net amount of the sums assessed and charged in the duplicates of assessment, after all appeals heard and determined, and all just reductions, abatements, and discharges made from such assessments and duplicates respectively; and the clerk who shall not have borne and sustained such incidental expenses shall by like warrant have and receive one penny in the pound of such net amount of the sums assessed and charged as aforesaid, after all such reductions, abatements, and discharges as aforesaid, provided he shall have duly performed the duties of his office in the manner mentioned in the said Act, and not otherwise: Provided always, that it shall be lawful for the Commissioners of her Majesty's Treasury to cause such further allowance to be made to such clerk as aforesaid who shall have faithfully performed his duty under this Act, and shall have borne and sustained such incidental expenses as aforesaid of any sum not exceeding one penny in the pound on the amount of such part of the gross assessment as shall have been discharged on occasion of claims for exemption or abatement made or allowed under this Act on the ground of income being below one hundred and fifty pounds and one hundred pounds a year respectively, as the said last-mentioned commissioners shall, on consideration of the extent and population of the district and the number of

such claims, think proper to direct; and the certificate of the Commissioners of Inland Revenue shall be an authority to the officers for receipt respectively to pay such further allowance.

58. The several collectors of the duties granted by this Act in Ireland shall have and receive such rate of poundage on the money of the said duties which they shall respectively collect and pay to the proper officer for receipt, or such other reasonable remuneration for their service, pains, and labour respectively in executing this Act, as the [Commissioners of her Majesty's] treasury shall by any warrant from time to time order and direct in that behalf.

59. This Act shall commence and take effect from and after the fifth day of April one thousand eight hundred and fifty-three, and together with the duties therein contained shall continue in force until the sixth day of April one thousand eight hundred and sixty, and no longer: Provided always, that this Act and the said duties shall not then cease with respect to any assessment which ought to have been made before the said last-mentioned day, but which shall not then have been made and completed, nor with respect to any of the said duties which shall have been assessed and shall then remain unpaid, nor with respect to any penalty before then incurred, nor with respect to any deduction of the said duties on any portion thereof authorized by law to be made out of any rent, interest, or other annual payment which shall become due or payable before the said last-mentioned day nor with respect to any penalty for refusing to allow any such deduction, although such refusal may be after the said last-mentioned day, nor shall the said duties cease in any case where the assessments for the preceding year shall not have been completed before the said sixth day of April one thousand eight hundred and sixty, but all the powers and provisions of this Act shall continue in force for making and completing all such assessments as aforesaid, and for levying and recovering the duties so assessed or to be assessed, and all arrear of such duties, and also for re-assessing the same in default of payment in the manner herein directed, and for making and allowing such deduction as aforesaid, and for the suing for, adjudging, and recovering any penalty which shall have been or may be incurred.

THE CUSTOMS AND INLAND REVENUE ACT, 1878.

41 & 42 Vict. c. 15.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

12. Notwithstanding any provision to the contrary contained in any Act relating to income tax (*a*), the commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule (D.) (*b*), or the profits of any concern chargeable by reference to the rules of that Schedule (*c*), allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on; and for the purpose of this provision, where machinery or plant is let to the person or company by whom the concern is carried on upon such terms that the person or company is bound to maintain the machinery or plant, and deliver over the same in good condition at the end of the term of the lease, such machinery or plant shall be deemed to belong to such person or company.

And where any machinery or plant is let upon such terms that the burden of maintaining and restoring the same falls upon the lessor, he shall be entitled on claim made to the commissioners for general or special purposes, in the manner prescribed by section sixty-one of the Act of the fifth and sixth years of her Majesty's reign, chapter thirty-five, to have repaid to him such a portion of the sum which may have been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the income tax upon such an amount as the said commissioners may think just and reasonable, as representing the diminished value by reason of wear and tear of such machinery or plant during the year: Provided, that no such claim shall be allowed unless it shall be made within twelve calendar months after the expiration of the year of assessment.

THE FINANCE ACT, 1907.

7 Edw. VII. c. 13.

[August 9th, 1907.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

PART V.

Income Tax.

18.—(1) Income tax for the year beginning on the sixth day of April nineteen hundred and seven shall be charged at the rate of one shilling.

(2) All such enactments relating to income tax as were in force on the fifth day of April nineteen hundred and seven shall, subject to any amendments made by this Act, have full force and effect with respect to the duty of income tax hereby granted.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A. and B. in the Income Tax Act, 1853, or of inhabited house duty, during the year ending on the fifth day of April nineteen hundred and seven, shall be taken as the annual value of such property for the same purpose during the next subsequent year; provided that this sub-section—

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May for the fifth day of April; and

(b) shall not apply to the Metropolis as defined by the Valuation (Metropolis) Act, 1869.

19.—(1) Any individual who claims and proves, in manner provided by this section, that his total income from all sources does not exceed two thousand pounds, and that any part of that income is earned income, shall be entitled, subject to the pro-

visions of this section, to such relief from income tax as will reduced the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of nine pence.

(2) The relief given by this section shall be in addition to and not in derogation of any exemption or other relief or abatement under the Income Tax Acts, except that where an individual is entitled to relief from income tax under section eight of the Finance Act, 1898, or, in respect of the payment of premiums, under section fifty-four of the Income Tax Act, 1853 (as extended by any subsequent enactment), relief shall be given under this section only in respect of such earned income (if any) as remains after deducting therefrom the amount on which he is relieved of income tax under the said sections eight and fifty-four.

(3) Where relief is given under section eight of the Finance Act, 1898, or section fifty-four of the Income Tax Act, 1853, by way of repayment of the tax after relief has been given under this section, the amount repaid shall be adjusted so that the total amount of the relief given under this section and under the said sections eight and fifty-four does not exceed the amount which would have been given if the whole relief had been claimed simultaneously.

(4) An individual who desires relief under this section must, in cases where he is required to make a return for the purpose of the assessment of income tax, claim that relief at the time the return is made and must, in any case, claim that relief before the thirtieth day of September in the year for which the tax is charged.

For the purpose of making a claim for relief under this section with respect to income tax charged under this Act for the current year, any individual may, before the thirtieth day of September nineteen hundred and seven, substitute a fresh return for any return previously made by him.

(5) An individual shall not be entitled to relief under this section in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

(6) Subject to the provisions of this section, all the provisions of the Income Tax Acts which relate to claims for exemption,

relief, or abatement, or the proof to be given with respect to those claims, shall apply to claims for relief under this section and the proof to be given with respect to those claims.

(7) For the purposes of this section the expression "income" means income as estimated according to the several rules and directions of the Income Tax Acts; and the expression "earned income" means—

(a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and

(c) any income which is charged under Schedules B. or D. in the Income Tax Act, 1853, or the rules prescribed by Schedule D. in the Income Tax Act, 1842, and is immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this provision to the individual includes either the husband or the wife.

(8) Section thirty-four of the Finance Act, 1894, shall cease to have effect so far as it gives relief or abatement to persons who are entitled to relief under section eight of the Finance Act, 1898.

20. Where an individual carrying on or exercising any profession, trade, or vocation in partnership with any other person makes any claim for exemption, relief, or abatement under the Income Tax Acts, the income of the individual from the partnership for the year to which the claim relates may be treated separately for the purpose of any such exemption, relief, or abatement, and if so treated shall be deemed to be the share to which he is entitled during the said year in the partnership

profits, such profits being estimated according to the several rules and directions of those Acts.

21.—(1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return of the names and places of residence of any persons employed by him, to whom this provision applies, and of the payments made to those persons in respect of that employment, and section fifty-five of the Income Tax Act, 1842, shall apply with respect to any such return as it applies with respect to the lists, declarations, or statements mentioned in that section.

This provision applies to all persons employed by an employer, except persons who are not employed in any other employment, and whose remuneration in the employment for the year does not exceed the sum for the time being fixed as the limit for total exemption from income tax.

(2) Where the employer is a body of persons, corporate or unincorporate (including a company), the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this provision, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

22.—(1) Every person upon whom notice is served in manner prescribed by section forty-eight of the Income Tax Act, 1842 (which relates to the delivery of notices by assessors), requiring him to make a return of any profits, gains, or income in respect of which he is chargeable with duty under Schedule D. or Schedule E. in the Income Tax Act, 1853, shall make a return in the form required by the notice, whether he is or is not chargeable with duty, and in default shall be liable to a penalty under section fifty-five of the Income Tax Act, 1842, accordingly:

Provided that a penalty inflicted in the case of a person proceeded against for not complying with this provision, who proves that he was not chargeable to duties, shall not exceed five pounds for any one offense.

(2) The duties imposed on officers of any corporation, company, fraternity, fellowship, or society by sections forty and fifty-four of the Income Tax Act, 1842, and by section eighteen of the Customs and Inland Revenue Act, 1879, shall, in the

case of any company, be performed by the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

23.—(1) Notwithstanding anything in an Acte concerninge Informers, being chapter five of the Acts of the thirty-first year of the reign of Queen Elizabeth, or in sub-section (4) of section twenty-one of the Taxes Management Act, 1880, or in sub-section (2) of section twenty-two of the Inland Revenue Regulation Act, 1890, or in any other enactment, proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts may be commenced within three years next after the fine or penalty is incurred.

(2) The time during which an assessment may be amended or an additional first assessment made under section fifty-two of the Taxes Management Act, 1880 (which relates to the amendment of assessments), or during which an assessment may be made on the estate of a deceased person under section twenty-four of the Customs and Inland Revenue Act, 1890 (which relates to the power to make such assessments), shall be any time within the year of assessment or within three years after the expiration thereof, and the time during which in cases of omission to charge any person a charge may be made and allowed or signed under section sixty-three of the Taxes Management Act, 1880 (which relates to the powers of surveyors to make such charges), shall be a period of three years after the expiration of the year for which the person ought to have been charged.

(3) Nothing in this section shall affect proceedings for the recovery of fines or penalties incurred before the commencement of this Act, or extend the time during which any assessment may be made or amended, or a charge may be made on any person in respect of income tax charged under any Act passed before the commencement of this Act.

24.—(1) Section one hundred and thirty-three of the Income Tax Act, 1842, and section six of the Revenue Act, 1865 (which provide for the reduction of assessments or the repayment of duty in certain cases where the profits of the year of assessment fall short of the sum on which the assessment has been made), shall cease to have effect as respects income tax charged for the year beginning the sixth day of April nineteen hundred and seven, or for any subsequent year.

(2) Where a person charged or chargeable with income tax in respect of any profession, trade, or vocation which has been set up or commenced within the period of three years upon the average of which the profits or gains are to be taken under the Income Tax Acts, or within the year of assessment, proves at the end of the year of assessment to the satisfaction of the commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the profession, trade, or vocation in the year of assessment fall short of the profits or gains as computed in accordance with those Acts, he shall be entitled to be charged on the actual amount of the profits or gains so arising instead of on the amount of the profits or gains so computed, and, if he has paid the full amount of the tax on the profits or gains so computed, be entitled to repayment of the amount overpaid.

(3) Where a profession, trade, or vocation is discontinued in any year, any person charged or chargeable with income tax in respect of that profession, trade, or vocation, shall be entitled to be charged on the actual amount of the profits or gains arising from the profession, trade, or vocation in that year, and shall also, if he proves to the satisfaction of the Commissioners, by whom the assessment has been or could have been made, that the total amount of the income tax paid during the three previous years in respect of that profession, trade, or vocation, exceeds the total amount which would have been paid if he had been assessed in each of those years on the actual amount of the profits or gains arising in respect of the profession, trade, or vocation, be entitled to repayment of the excess.

25. —(1) In estimating, under any Schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorized, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due.

(2) Sub-section (3) of section twenty-four of the Customs and Inland Revenue Act, 1888, shall apply to any such royalties or sums as it applies to interest of money or annuities

charged with income tax under Schedule D. in the Income Tax Act, 1853.

26.—(1) For the purpose of enabling deductions for wear and tear to be allowed by the additional commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the additional commissioners in assessing those profits and gains shall make such allowances in respect of those claims as they think just and reasonable.

(2) No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement.

(3) Where as respects any trade, manufacture, adventure, or concern full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) In this section the expression "deduction for wear and tear" means the deduction allowed, or which would be allowed, under section twelve of the Customs and Inland Revenue Act, 1878, as representing the diminished value, by reason of wear and tear during the year, of machinery or plant used for the purposes of any trade, manufacture, adventure, or concern.

27. Any application for relief under section twenty-three of the Customs and Inland Revenue Act, 1890, may be made either to the Commissioners for the general purposes of the Acts

relating to income tax as provided in that section or to the Commissioners for the special purposes of those Acts, and the last-named Commissioners shall have the same power under that section as the first-named Commissioners have.

28. Where a clergyman or minister of any religious denomination pays rent for a dwelling-house, and uses any part thereof mainly and substantially for the purposes of his duty or function as such clergyman or minister, such part of the rent of the dwelling-house, not exceeding one-eighth, as the Commissioners by whom any assessment for income tax is made may allow, shall be treated for the purposes of section fifty-two of the Income Tax Act, 1853, as expenses to which the provisions of that section as to deduction and repayment apply.

PART VII.

General.

30.—(1) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Part V. of this Act shall be construed together with the Income Tax Acts, 1842 and 1853, and any other enactments relating to income tax, and those enactments and Part V. of this Act are in this Act referred to as the Income Tax Acts.

(3) This Act may be cited as the Finance Act, 1907.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Vict. c. 35.	The Income Tax Act, 1842.	The third rule of the rules applying to both the preceding cases in section one hundred from "except for the purpose" to "gains of such partnership." Section one hundred and thirty-three, except so far as it is referred to or incorporated in any other enactment.
28 & 29 Vict. c. 38.	The Revenue Act, 1865.	Section six.
*	*	* * *

THE FINANCE (1909-10) ACT, 1910.

10 Edw. VII. c. 8.

[April 29th, 1910.]

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions.

PART IV.

Income Tax.

65.—(1) Income tax for the year beginning on the sixth day of April nineteen hundred and nine shall be charged at the rate of one shilling and twopence.

(2) All such enactments relating to income tax as were in force on the fifth day of April nineteen hundred and nine shall, subject to the provisions of this Act, have full force and effect with respect to any duties of income tax hereby granted.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A. and B. in the Income Tax Act, 1853, or of inhabited house duty, during the year ending on the fifth day of April nineteen hundred and nine shall be taken as the annual value of such property for the same purpose during the next subsequent year; provided that this sub-section—

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May for the fifth day of April; and

(b) shall not apply to the metropolis as defined by the Valuation (Metropolis) Act, 1869.

(4) Section thirty-eight of the Finance Act, 1894 (which relates to duty on dividends, etc., paid prior to the passing of the Act), shall be applied with respect to the year which commenced on the sixth day of April nineteen hundred and nine, as it was applied with respect to the year which commenced on the sixth day of April eighteen hundred and ninety-four.

66.—(1) In addition to the income tax charged at the rate of one shilling and twopence under this Act there shall be charged, levied, and paid for the year beginning on the sixth day of April nineteen hundred and nine, in respect of the income of any individual, the total of which from all sources exceeds five thousand pounds, an additional duty of income tax (in this Act referred to as a super-tax) at the rate of sixpence for every pound of the amount by which the total income exceeds three thousand pounds.

(2) For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts; but, in estimating the income of the previous year for the purpose of super-tax,—

(a) there shall be deducted in respect of any land on which income tax is charged upon the annual value estimated otherwise than in relation to profits (in addition to any other deduction) any sum by which the assessment is reduced for the purposes of collection under section thirty-five of the Finance Act, 1894, or on which duty has been repaid under the provisions of this Act relating to the repayment of duty in respect of the cost of maintenance, repairs, insurance, and management; and

(b) there shall be deducted the amount of any premiums in respect of which relief from income tax may be allowed under section fifty-four of the Income Tax Act, 1853 (as extended by any subsequent enactment); and

(c) there shall be deducted in the case of a person in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office and for which an allowance has not already been made;

(d) Any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or

the annual sums, as the case may be, accrued in whole or in part before that year.

67. Section nineteen of the Finance Act, 1907, shall apply to any individual who claims and proves, in manner provided by that section, that his total income from all sources exceeds two thousand pounds and does not exceed three thousand pounds, as if one shilling were substituted for ninepence, and as if, as respects any such individual, the thirty-first day of July nineteen hundred and ten were substituted for the thirtieth day of September nineteen hundred and seven.

68.—(1) If any individual who has been assessed or charged to income tax, or has paid income tax either by deduction or otherwise, claims and proves, in manner prescribed by the Income Tax Acts, that his total income from all sources, although exceeding one hundred and sixty pounds, does not exceed five hundred pounds, and that he has a child or children living and under the age of sixteen years at the commencement of the year for which the income tax is charged, he shall be entitled, in respect of every such child, to relief from income tax equal to the amount of the income tax upon ten pounds.

The expression "child" and the expression "children" in this provision includes stepchild or stepchildren, but does not include illegitimate child or illegitimate children: Provided that where the parents of any illegitimate child or children shall, after the birth of such child or children, have married each other, such illegitimate child or children shall be included in the expression "child" and "children."

(2) Any relief under this section shall be given either by reduction of the assessment, or repayment of the excess which has been paid, or by both those means, as the case may require.

(3) Sub-sections (2) and (3) of section nineteen of the Finance Act, 1907, shall be construed as if this section were mentioned therein as well as section eight of the Finance Act, 1898, and section fifty-four of the Income Tax Act, 1853, and the provisions of the Income Tax Acts, which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims shall apply to claims for relief under this section, and the proof to be given with respect to those claims.

69.—(1) If the owner of any land or houses to which this

section applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted for the purpose of income tax under Schedule A., and in the case of houses one-sixth part of that value, he shall be entitled, in addition to any reduction of the assessment under section thirty-five of the Finance Act, 1894, on making a claim for the purpose, to repayment of the amount of the duty on the excess, not exceeding in the case of land one-eighth part, and in the case of houses one-twelfth part, of the duty on an amount equal to the annual value.

For the purposes of this section the term "maintenance" shall include the replacement of farm-houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

(2) This section shall apply to any land (inclusive of farmhouses and other buildings, if any) the assessment on which is, for the purpose of collection, reduced under section thirty-five of the Finance Act, 1894, and to any houses the annual value of which, as adopted for the purpose of income tax under Schedule A., does not exceed eight pounds, the assessment on which is so reduced.

(3) In comparing the cost of maintenance, repairs, insurance, and management of any land or houses for the purpose of this section with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance, and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses as the case may be.

(4) All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims shall apply to claims for repayment under this section and the proof to be given with respect to those claims:

Provided that if the owner of any land or house makes and delivers to the surveyor of taxes of any district in which the land or house is wholly or partly situate a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner

is entitled under this section shall be certified by the surveyor, and repayment shall thereupon be made in accordance with this certificate.

(5) In computing the five-year average for the purposes of this section, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the surveyor of taxes of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the duty in respect of which a claim for repayment is made is charged.

70. The exemption from income tax granted by the Income Tax Acts to a friendly society, and by the Trade Union (Provident Funds) Act, 1893, to a registered trade union, by the rules of which it appears that the sums assured to any person by the society or union do not exceed if by way of gross sum two hundred pounds, or if by way of an annuity thirty pounds a year, shall extend to any registered friendly society and to any registered trade union, if the society or union are restricted either by virtue of any Act of Parliament or by their rules from assuring to any person any sum exceeding three hundred pounds by way of gross sum or fifty-two pounds a year by way of annuity.

71. —(1) No exemption, abatement, or relief under the Income Tax Acts which depends wholly or partially on the total income of an individual from all sources shall be given to any person, unless the person claiming the exemption, abatement, or relief is resident in the United Kingdom:

Provided that any person who is or has been employed in the service of the Crown or who is employed in the service of any missionary society abroad or in the service of any of the native states under the protectorate of the British Crown, and any person resident in the Isle of Man or Channel Islands and any person resident abroad who satisfies the Commissioners that he is so resident for the sake of health, shall be entitled to any relief, exemption, or abatement to which he would be entitled if he were resident in the United Kingdom, and if his total income from all sources were calculated as including any income in respect of which income tax may not be chargeable as well as income in respect of which income tax is chargeable.

(2) Income tax shall not be payable in respect of the in-

terest or dividends of any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners that the person owning the securities and entitled to the interest or dividends is not resident in the United Kingdom; but, save as provided by this or any other Act, no allowance shall be given or repayment made in respect of the income tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom.

Relief from income tax under this sub-section may be given by the Commissioners either by way of allowance or repayment on a claim being made to them for the purpose within six months of the end of the year for which the income tax is charged.

72. —(1) The super-tax shall be assessed and charged by the Commissioners for the special purposes of the Acts relating to income tax (in this Act referred to as the Special Commissioners).

(2) Every person upon whom notice is served in manner prescribed by regulations under this section by the Special Commissioners requiring him to make a return of his total income person all sources or, in the case of a notice served upon any person who is chargeable with or liable to be assessed to income tax under section forty-one of the Income Tax Act, 1842, or section twenty-four of the Customs and Inland Revenue Act, 1890, as representing an incapacitated, non-resident, or deceased person, of the total income from all sources of the incapacitated, non-resident, or deceased person, shall, whether he is or is not chargeable with the super-tax, make such a return in the form and within the time required by the notice.

(3) It shall be the duty of every person chargeable with the super-tax to give notice that he is chargeable to the Special Commissioners before the thirtieth day of September in the year for which the super-tax is chargeable: Provided that for the purpose of this provision the thirty-first day of July nineteen hundred and ten shall, as respects the year beginning on the sixth day of April nineteen hundred and nine, be substituted for the thirtieth day of September of that year.

(4) If any person without reasonable excuse fails to make any return or to give any notice required by this section, he shall

be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues.

Any penalty under this provision shall be recoverable in the High Court, or in Scotland in the Court of Session.

(5) If any person fails to make a return under this section, or if the Special Commissioners are not satisfied with any return made under this section, the Special Commissioners may make an assessment of the super-tax according to the best of their judgment.

(6) All provisions of the Income Tax Acts relating to persons who are to be chargeable with duty, assessments, and appeals against those assessments, and to the collection and recovery of duty, and to cases to be stated for the opinion of the High Court shall, so far as they are applicable, apply to the charge, assessment, collection, and recovery of duty under this section, and the Special Commissioners shall, for the purpose of assessment, have any powers of an inspector or surveyor of taxes, and for the purpose of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same powers at and upon the determination of the appeal as a surveyor of taxes has at and upon the determination of any appeal under the Income Tax Acts.

(7) The Special Commissioners may amend any assessment made by them under this section, or make an assessment or an additional assessment, during any time within the year of assessment, or within three years after the expiration thereof.

(8) The Commissioners may make regulations for the purpose of carrying this section into effect.

PART VIII.

General.

92. Application of existing enactments to licenses granted under this Act.

93. —(1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commis-

sioners of Customs and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

95. —(1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated. drawback made before the passing of this Act on account of of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid

has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

96.—(2) Any reference to "the Commissioners" in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

(4) Part IV. of this Act shall be construed together with the Income Tax Acts, 1842 and 1853, and any other enactments relating to Income Tax, and those enactments and Part IV. of this Act are in this Act referred to as the Income Tax Acts.

(7) This Act may be cited as the Finance (1909–10) Act, 1910.

PART VII.

LEADING CASES ON INCOME TAXES UNITED STATES SUPREME COURT.

STELLA P. FLINT, as General Guardian of the Property of Samuel N. Stone, Junior, a Minor, Appt., v. STONE TRACY COMPANY et al. (No. 407.)

WYCKOFF VAN DERHOEFF, Appt., v. CONEY ISLAND & BROOKLYN RAILROAD COMPANY et al. (No. 409.)

FRANCIS L. HINE, Appt., v. HOME LIFE INSURANCE COMPANY et al. (No. 410.)

FRED W. SMITH, Appt., v. NORTHERN TRUST COMPANY, A. C. Bartlett, William A. Fuller, et al. (No. 411.)

WILLIAM H. MINER, Appt., v. CORN EXCHANGE NATIONAL BANK OF CHICAGO, Charles H. Wacker, Martin A. Ryerson, et al. (No. 412.)

CEDAR STREET COMPANY, Appt., v. PARK REALTY COMPANY. (No. 415.)

LEWIS W. JARED, Appt., v. AMERICAN MULTIGRAPH COMPANY et al. (No. 420.)

JOSEPH E. GAY, Appt., v. BALTIC MINING COMPANY et al. (No. 425.)

PERCY BRUNDAGE, Appt., v. BROADWAY REALTY COMPANY et al. (No. 431.)

PAUL LACROIX, Appt., v. MOTOR TAXIMETER CAB COMPANY et al. (No. 432.)

ARTHUR LYMAN and Arthur T. Lyman, as Trustees under the Last Will and Testament of George Baty Blake, Deceased, Appts., v. INTERBOROUGH RAPID TRANSIT COMPANY et al. (No. 442.)

GEORGE WENDELL PHILLIPS, Appt., v. FIFTY ASSOCIATES et al. (No. 443.)

OSCAR MITCHELL, Appt., v. CLARK IRON COMPANY. (No. 446.)

WILLIAM H. FLUHRER, Albert W. Durand, and Howard H. Williams, Appts., v. NEW YORK LIFE INSURANCE COMPANY. (No. 456.)

KATHERINE CARY COOK, Harriet Huntington Cook, and Ellenor Richardson Cook, by Anna H. R. Cook, Their Guardian and Next Friend, Appts., v. BOSTON WHARF COMPANY et al. (No. 457.)

[220 U. S. 107, 55 L. ed. 389.]

Statutes — origin of revenue bills — amendment by Senate.

1. The substitution in the Senate of a tax on corporations in lieu of the plan of inheritance taxation contained in a general bill for the collection of revenue as it came from the House of Representatives, where the bill originated, was not forbidden by the provisions of U. S. Const. art. 1, § 7, that all bills for the raising of revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.

[For other cases, see Statutes, I. a, in Digest Sup. Ct. 1908.]

Internal revenue — Federal corporation tax — excise or direct tax.

2. An excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity is what was imposed by the act of August 5, 1909 (36 Stat. at L. 11, 112–117, chap. 6. U. S. Comp. Stat. Supp. 1909, pp. 659, 844–849), § 38, providing that insurance companies and all corporations, joint stock companies, or associations organ-

ized for profit, and having a capital stock represented by shares, shall be subject annually to a special excise tax with respect to the carrying on or doing business, equivalent to 1 per centum upon the entire net income over and above $5,000 received from all sources during the year, with certain allowances and deductions.

[For other cases, see Internal Revenue, I. a, in Digest Sup. Ct. 1908.]

Internal revenue — validity of Federal corporation tax — apportionment.

3. The tax measured by net annual income, imposed by the act of August 5, 1909, § 38, upon the carrying on or doing of business in a corporate or quasi corporate capacity, being an excise, and not a direct tax, is not invalid because not apportioned among the several states according to population.

[For other cases, see Internal Revenue, 18–36, in Digest Sup. Ct. 1908.]

Internal revenue — Federal taxation of state agencies — excise on corporation.

4. The excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi corporate capacity, is not invalid because the business taxed is done in pursuance of the authority granted by a state, in the creation of private corporations.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporation — uniformity.

5. Taxing a business when carried on by a corporation, and exempting a similar business when carried on by a partnership or by a private individual, as is done by the act of August 5, 1909, § 38, imposing an excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity, does not invalidate the tax, since the only limitation upon the power of Congress is uniformity in laying the tax, and this is a geographical uniformity, which does not require the equal application of the tax to all persons or corporations who may come within its operation.

[For other cases, see Internal Revenue, 13–15, 37–42, in Digest Sup. Ct. 1908.]

Constitutional law — discrimination — taxation of corporations.

6. There is such a substantial difference between the carrying on of business by corporations and the same business when conducted by a private firm or individual as would justify—even were the principles of the 14th Amendment to the Federal Constitution applicable—the excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi corporate capacity.

[For other cases, see Constitutional Law, 299–312, in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — measure of tax.

7. Measuring the excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi

corporate capacity by the entire net income from all sources does not invalidate the tax, although a part of such income may be derived from property in itself not taxable.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — measure of tax.

8. The measurement by the net corporate income from all sources of the excise imposed by the act of August 5, 1909, § 38, upon the doing or carrying on of business in a corporate or quasi corporate capacity, is not so arbitrary and baseless as to fall outside of the authority of the taxing power.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Constitutional law — due process of law — Federal excise on corporations.

9. Property is not taken without due process of law by the imposition, under the act of August 5, 1909, § 38, of an excise, measured by the net corporate income, upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Constitutional Law, 523–553, in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — possible results as affecting validity.

10. The possibility that the rights of the several states to create corporations may practically be destroyed by the exercise of the power assumed by Congress in the act of August 5, 1909, § 38, to impose an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity, furnishes no ground for judicial interference with the tax.

[For other cases, see Internal Revenue, I. b, in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — doing business — real estate companies.

11. Corporations organized for and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of the act of August 5, 1909, § 38, imposing an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — doing business — taximeter company.

12. A corporation owning and leasing taxicabs and collecting rents therefrom is engaged in business within the meaning of the act of August 5, 1909, § 38, imposing an excise upon the doing or carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — Federal taxation of state agencies — excise on public-service corporations.

13. Public-service corporations, such as street railway companies created under state laws, may constitutionally be subjected to the excise imposed by the act of August 5, 1909, § 38, upon the doing or carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — exemptions.

14. Exempting corporations whose net annual incomes are under $5,000 from the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, does not invalidate the tax.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — exemptions.

15. Labor, agricultural, and horticultural organizations, fraternal and benevolent societies, and organizations for religious, charitable or educational purposes, could be excepted from the operation of the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, without invalidating the tax.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — validity of deductions.

16. The excise measured by net annual income, imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, is not invalid because a deduction of interest payments is permitted only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on bonded or other indebtedness to an amount not exceeding the paid-up capital stock.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporations — inequality of application.

17. Inequality of application, owing to different local conditions, does not invalidate the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, 37–42, in Digest Sup. Ct. 1908.]

Internal revenue — Federal tax on state agencies — excise on corporations.

18. Corporations acting as trustees, guardians, etc., under the authority of the laws or courts of a state, are not the agents of the state government in such a sense as to be exempt from the imposition, under the act of August 5, 1909, § 38, of an excise measured by net income upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

Searches and seizures — excise on corporation — making tax returns public.

19. Making the returns for the assessment of the excise imposed by the act of August 5, 1909, § 38, on the doing or the carrying on of business in a corporate or quasi corporate capacity, public documents and open to inspection as such, under certain restrictions, as is done by subsec. 6 of that act, as amended by the act of June 17, 1910 (36 Stat. at L. 494, chap. 297), does not do violence to the constitutional protection against unreasonable searches and seizures.

[For other cases, see Searches and Seizures, in Digest Sup. Ct. 1908.]

Statutes — when validity may be assailed.

20. No objections to the validity of a statute will be considered which do not properly arise in the case before the court.

[For other cases, see Statutes, I. d, 3, in Digest Sup. Ct. 1908.]

[Nos. 407, 409, 410, 411, 412, 415, 420, 425, 431, 432, 442, 443, 446, 456 and 457.]

Argued March 17 and 18, 1910. Ordered for reargument before full bench May 31, 1910. Reargued January 17, 18 and 19, 1911. Decided March 13, 1911.

Appeal from the Circuit Court of the United States for the District of Vermont to review a decree sustaining a demurrer to and dismissing a bill which sought to restrain the directors of a corporation from complying with the Federal corporation tax. Affirmed. Also

Seven appeals from the Circuit Court of the United States for the Southern District of New York; three appeals from the Circuit Court of the United States for the District of Massachusetts; two appeals from the Circuit Court of the United States for the Northern District of Illinois; an appeal from the Circuit Court of the United States for the Northern District of Ohio; and an appeal from the Circuit Court of the United States for the District of Minnesota,—all bringing up similar decrees for review. Affirmed.

The facts are stated in the opinion.

Mr. *Maxwell Evarts* argued the cause, and, with Mr. *John G. Sargent,* Attorney General of Vermont, and Mr. *Henry S. Wardner,* filed a brief for appellant in No. 407:

A state cannot tax an instrumentality of the Federal government.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Weston

v. Charleston, 2 Pet. 449, 7 L. ed. 481; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451.

For the same reason, and because a state is as independent a sovereignty within its sphere as the national government, Congress cannot pass any law taxing an instrumentality of a state.

Day v. Buffinton, 3 Cliff. 376, Fed. Cas. No. 3,675, s. c. 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673.

The Federal courts have assumed, and the highest state courts have decided, that a state cannot tax patents granted by the general government (M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Patterson v. Kentucky, 97 U. S. 501, 24 L. ed. 1115; Webber v. Virginia, 103 U. S. 344, 26 L. ed. 565; Allen v. Riley, 203 U. S. 347, 51 L. ed. 216, 27 Sup. Ct. Rep. 95, 8 A. & E. Ann. Cas. 137; Re Sheffield, 64 Fed. 833; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111; People ex rel. Edison Electric Illuminating Co. v. Board of Assessors, 156 N. Y. 417, 42 L.R.A. 290, 51 N. E. 269). A patent is a franchise (Bloomer v. McQuewan, 14 How. 539, 14 L. ed. 532) that can be granted concurrently by both the state and the United States (Livingston v. Van Ingen, 9 Johns. 507; 1 Robinson, Patents § 45), and is clearly not an instrumentality of either state or Federal government.

This court has held that a state cannot tax the franchise granted to a Federal corporation, and the decision is placed not upon the ground that the corporation is an instrumentality of the government, but because the franchise emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers, of the government, and repugnant to its paramount sovereignty.

California v. Central P. R. Co. 127 U. S. 1, 41, 32 L. ed. 150, 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

Inasmuch as the principle of the decision that a state cannot tax a Federal instrumentality was held to apply when the question was reversed, and Congress undertook to tax a state instrumentality, it would seem to follow that the reasons and principles for the decision that a state cannot tax a Federal

corporate franchise would also apply to an attempt by the general government to tax a corporate franchise granted by a state.

If we run through the cases decided by this court, we find expressions—not decisions, it is true, but expressions—indicating that, in American jurisprudence, the power to tax a corporate franchise rests only with the state which creates it.

West River Bridge Co. v. Dix, 6 How. 548, 12 L. ed. 552; State Tax on R. Gross Receipts, 15 Wall. 296, 21 L. ed. 169; Baltimore & O. R. Co. v. Maryland, 21 Wall. 473, 22 L. ed. 684; Re Greene, 52 Fed. 112; Hale v. Henkel, 201 U. S. 43, 86, 50 L. ed. 652, 670, 26 Sup. Ct. Rep. 370.

The law puts the burden on the power of the state to create corporations. The mere phraseology used in the statute—"special excise tax with respect to the carrying on or doing business"—counts for little as against the substance and effect when the constitutionality of the law is attacked.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 580, 581, 39 L. ed. 759, 818, 819, 15 Sup. Ct. Rep. 673; Knowlton v. Moore, 178 U. S. 41, 81, 44 L. ed. 969, 985, 20 Sup. Ct. Rep. 747; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 411, 48 L. ed. 496, 501, 24 Sup. Ct. Rep. 376; Craig v. Missouri, 4 Pet. 410, 433, 7 L. ed. 903, 911.

Classifying corporations by Congress for the imposition of Federal taxes and other special burdens takes their property without due process of law and without just compensation.

Holden v. Hardy, 169 U. S. 366, 389, 42 L. ed. 780, 790, 18 Sup. Ct. Rep. 383; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Rep. 579; Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561; Twining v. New Jersey, 211 U. S. 78, 101, 102, 53 L. ed. 97, 107, 29 Sup. Ct. Rep. 14; Den ex dem. Murray v. Hoboken Land & Improv. Co. 18 How. 272, 276, 15 L. ed. 372, 374; Sinking Fund Cases, 99 U. S. 700, 718, 25 L. ed. 496, 501; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 599, 39 L. ed. 759, 825, 15 Sup. Ct. Rep. 673; Ballard v. Hunter, 204 U. S. 241, 51 L. ed. 461, 27 Sup. Ct. Rep. 261; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 301, 42 L. ed. 1037, 1045, 18 Sup. Ct. Rep. 594.

The denial of the equal protection of the laws and the taking of property without due process of law are, so far as this case is concerned, the same thing, because the injury complained

of lies in the enforcement of a statute which is unequal and arbitrary.

Duncan v. Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Rep. 570; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 41 L. ed. 666, 17 Sup. Ct. Rep. 255; Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 241, 41 L. ed. 979, 986, 17 Sup. Ct. Rep. 581; Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard) 183 U. S. 79, 46 L. ed. 92, 22 Sup. Ct. Rep. 30; Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. Rep. 431.

Even in tax statutes the Federal Constitution cannot be utterly disregarded.

Bell's Gap. R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 92, 45 L. ed. 102, 103, 21 Sup. Ct. Rep. 43; Billings v. Illinois, 188 U. S. 97, 101, 47 L. ed. 400, 402, 23 Sup. Ct. Rep. 272; Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247.

The corporation tax is a direct tax on the franchise, and therefore unconstitutional, because not apportioned.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; Nicol v. Ames, 173 U. S. 509, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Rep. 522; California v. Central P. R. Co. 127 U. S. 1, 41, 42, 32 L. ed. 150, 157, 158, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Beale, Foreign Corp. § 508, p. 665; Lumberville Delaware Bridge Co. v. State Assessors, 55 N. J. L. 537, 25 L.R.A. 134, 26 Atl. 711.

The joint stock companies stand on the same basis as the corporations as far as the corporation tax is concerned.

Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life Ins. Co. v. Oliver) 10 Wall. 566, 19 L. ed. 1029; Atty. Gen. v. Mercantile M. Ins. Co. 121 Mass. 524; People ex rel. Platt v. Wemple, 117 N. Y. 136, 6 L.R.A. 303, 2 Inters. Com. Rep. 735, 22 N. E. 1046.

Mr. *Richard V. Lindabury* argued the cause, and, with Messrs. *Charles W. Pierson* and *Robert Lynn Cox*, filed a brief for appellants in Nos. 409 and 410:

The tax is not an excise tax upon business or occupation, but is either (a) a corporate franchise tax, or (b) an income tax.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Maine v. Grand Trunk R. Co. 142 U. S. 217, 227, 35 L. ed. 994, 995, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Fairbank v. United States, 181 U. S. 283, 293, 45 L. ed. 862, 866, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; State Tax on Foreign-held Bonds, 15 Wall. 300, 319, 21 L. ed. 179, 186; Pollock v. Farmers' Loan & T. Co. 157 U. S. 580–583, 39 L. ed. 818–820, 15 Sup. Ct. Rep. 673; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.

If the tax be construed as a franchise tax, it constitutes, so far as state corporations are concerned, an interference with sovereign powers and functions of the states not surrendered to the general government, and expressly reserved to the states by the 10th Amendment.

Home Ins. Co. v. New York, 134 U. S. 594, 600, 601, 33 L. ed. 1025, 1029, 1030, 10 Sup. Ct. Rep. 593; Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163; Horn Silver Min. Co. v. New York, 143 U. S. 305, 313, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403; People ex rel. United States Aluminium Printing Plate Co. v. Knight, 174 N. Y. 475, 63 L.R.A. 87, 67 N. E. 65; Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 317, 9 L. ed. 709, 732; Union P. R. Co. v. Peniston, 18 Wall. 5, 30, 21 L. ed. 787, 791; Mercantile Nat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; Cooley, Const. Lim. 7th ed. p. 684; Fifield v. Close, 15 Mich.

509; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Chisholm v. Georgia, 2 Dall. 419, 1 L. ed. 440; Weston v. Charleston, 2 Pet. 449, 467, 7 L. ed. 481, 487; Mercantile Nat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151, 29 L. ed. 845, 6 Sup. Ct. Rep. 670; People ex rel. Edison Electric Illuminating Co. v. Board of Assessors, 156 N. Y. 417, 42 L.R.A. 290, 51 N. E. 269; People ex rel. A. J. Johnson Co. v. Roberts, 159 N. Y. 70, 45 L.R.A. 126, 53 N. E. 685; Re Sheffield, 64 Fed. 833; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111; Webber v. Virginia, 103 U. S. 344, 26 L. ed. 565; Wisconsin C. R. Co. v. Price County, 133 U. S. 496, 504, 33 L. ed. 687, 690, 10 Sup. Ct. Rep. 341.

The fact that a tax is on property does not render it constitutional if it nevertheless involves an interference with sovereign powers or instrumentalities of a state.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597.

If the tax is on franchises as property, it is a tax imposed on real or personal property, and is void under art. 1, §§ 2 and 9 of the Constitution, as being a direct tax not apportioned according to population.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, rehearing 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912.

The tax ordained by the act in question is nonuniform, arbitrary, and unequal; and, if imposed and enforced, would deprive the corporations and joint stock associations against which it is levied of their property without due process of law, contrary to the provisions of the 5th Amendment of the Constitution.

Cooley, Tax. p. 259; Pollock v. Farmers' Loan & T. Co. 157 U. S. 598, 39 L. ed. 825, 15 Sup. Ct. Rep. 673; People ex rel. Farrington v. Mensching, 187 N. Y. 8, 10 L.R.A.(N.S.) 625, 79 N. E. 884, 10 A. & E. Ann Cas. 101; 1 Hamilton's Works, 1885, ed. 270; Dill. Mun. Corp. §§ 736, 737; Desty, Tax. § 10;

People ex rel. Detroit & H. R. Co. v. Salem, 20 Mich. 452, 4 Am. Rep. 400; State ex rel. White House School Dist. No. 7 v. Readington Twp. 36 N. J. L. 70; State, Agens, Prosecutor, v. Newark, 37 N. J. L. 421, 18 Am. Rep. 729; Durach's Appeal, 62 Pa. 494; Santa Clara R. Tax Case, 9 Sawy. 170, 18 Fed. 388; Citizens' Sav. & L. Asso. v. Topeka, 29 Wall. 655, 663, 22 L. ed. 455, 461; Hurtado v. California, 110 U. S. 517, 534, 28 L. ed. 232, 238, 4 Sup. Ct. Rep. 111, 292; Barbier v. Connolly, 113 U. S. 27, 31, 28 L. ed. 923, 924, 5 Sup. Ct. Rep. 357; Re Kemmler, 136 U. S. 436, 448, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed 225, 227, 11 Sup. Ct. Rep. 579; Giozza v. Tiernan, 148 U. S. 657, 662, 37 L. ed. 599, 601, 13 Sup. Ct. Rep. 721; Duncan v. Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Rep. 570; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 151, 154, 159, 41 L. ed. 667–669, 17 Sup. Ct. Rep. 255.

Mr. *Edward Osgood Brown* argued the cause, and, with Messrs. *Orville Peckham, George Packard,* and *Vincent J. Walsh,* filed a brief for appellants in Nos. 411 and 412:

Despite the attempt of its framers by mere phraseology to negative the idea that the tax is an income tax, it remains so because of its essential character and substance.

Stockard v. Morgan, 185 U. S. 27, 46 L. ed. 785, 22 Sup. Ct. Rep. 576; Asbell v. Kansas, 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 A. & E. Ann. Cas. 1101; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638.

While a tax in certain cases may be laid on an intangible right or privilege in proportion to the value of some other property without being a tax on that property (as held in Michigan C. R. Co. v. Collector [Michigan C. R. Co. v. Slack] 100 U. S. 595, 25 L. ed. 647; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829; Delaware Railroad Tax, 18 Wall. 206, 21 L. ed. 888; New York v. Roberts, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Rep. 58), this is only true (1) where the value of the property by which the tax is gauged is a reasonable measure of the value of the intangible right or privilege, or (2) where the intangible

right might be altogether taken away by the taxing government, and may therefore be conceded only on such conditions as that government pleases.

The selection of the persons to be taxed for the privilege of existence or of doing business is so "arbitrary and confiscatory" that it transcends the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems. Therefore this court should interfere.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

The corporations created by the states are to the United States in the same relation as natural persons who are citizens of those states, and cannot be arbitrarily selected for taxation on the privilege of existing or doing business.

Louisville, C. & C. R. Co. v. Letson, 2 How. 497, 11 L. ed. 353; Marshall v. Baltimore & O. R. Co. 16 How. 314, 14 L. ed. 953; Ohio & M. R. Co. v. Wheeler, 1 Black, 286, 17 L. ed. 130; Bank of Augusta v. Earle, 13 Pet. 519, 10 L. ed. 274; St. Louis v. Wiggins Ferry Co. 11 Wall. 423, 20 L. ed. 192; San Bernardino County v. Southern P. R. Co. 118 U. S. 417, 30 L. ed. 125, 6 Sup. Ct. Rep. 1144; Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania, 125 U. S. 181, 31 L. ed. 650, 2 Inters. Com. Rep. 24, 8 Sup. Ct. Rep. 737; Charlotte, C. & A. R. Co. v. Gibbes, 142 U. S. 386, 35 L. ed. 1051, 12 Sup. Ct. Rep. 255.

As the right or privilege of existing as a corporation or as a joint stock company or as an insurance company, and the right or privilege of doing business as any one of them, are very different things in one state from what they are in another, because of the differing laws of the states (for example, freedom of a corporation stockholder from individual liability exists in New Jersey, but not in California), and as this court takes judicial notice on this appeal of the laws of all the states (Hanley v. Donoghue, 116 U. S. 1, 29 L. ed. 535, 6 Sup. Ct. Rep. 242; Fourth Nat. Bank v. Francklyn, 120 U. S. 747, 30 L. ed. 825, 7 Sup. Ct. Rep. 757; Case v. Kelly, 133 U. S. 21, 33 L. ed. 513, 10 Sup. Ct. Rep. 216; Mills v. Green, 159 U. S. 651, 40 L. ed. 293, 16 Sup. Ct. Rep. 132), the corporation tax is, within the judicial knowledge of the court, unequal and wanting in uniformity between the states.

The corporation tax is unconstitutional, whether direct or indirect, and whether uniform or not, because it is an attempted interference with the instrumentalities of the states.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699.

Power to grant acts of incorporation is practically unlimited in the states, and incident to the sovereignty.

Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 9 L. ed. 709.

Congress has not the power to tax and thus destroy the right of existence of a corporation. Such a power would be tantamount to a power to tax the right to create such an existence.

California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151–178, 29 L. ed. 845–854, 6 Sup. Ct. Rep. 670.

Whatever may be said of other corporations, public-service corporations in private hands, furnishing transportation, water, light, or performing other public or semipublic functions, are instrumentalities of the state in the strictest sense, and for that reason are given the power of eminent domain; the functions of many of them are indeed governmental; *e. g.*, the functions of water companies.

Rogers Park Water Co. v. Fergus, 180 U. S. 624, 45 L. ed. 702, 21 Sup. Ct. Rep. 490; Freeport Water Co. v. Freeport, 180 U. S. 587, 45 L. ed. 679, 21 Sup. Ct. Rep. 493; Danville Water Co. v. Danville City, 180 U. S. 619, 45 L. ed. 696, 21 Sup. Ct. Rep. 505.

The income of municipal bonds to a very large amount is included in the income on which the Northern Trust Company threatens to pay 1 per centum as a tax; such income from instrumentalities of state governments has been explicitly declared by this court untaxable by Congress, directly or indirectly, for

any purpose whatever (Pollock v. Farmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Rep. 673 et seq.), and this threatened action should be enjoined independently of all other considerations.

Mr. *Julien T. Davis* argued the cause, and, with Mr. *Frederic D. McKenney,* filed a brief for appellant in No. 415:

The fact that the tax is denominated a "special excise tax with respect to the carrying on or doing business" is not controlling.

Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543; Collins v. New Hampshire, 171 U. S. 30, 43 L. ed. 60, 18 Sup. Ct. Rep. 768; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678; Pollock v. Farmers' Loan & T. Co. 157 U. S. 581, 39 L. ed. 819, 15 Sup. Ct. Rep. 673.

The natural and reasonable effect of the corporation tax law is to tax net income.

Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543; Collins v. New Hampshire, 171 U. S. 30, 43 L. ed. 60, 18 Sup. Ct. Rep. 768; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673.

The Federal government and the government of the states are, within their respective spheres of action, mutually independent, and, because of such independence, the taxing power of each is limited, in that neither may tax the agencies of the other.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451; The Banks v. New York (New York ex rel. Bank of N. Y. Nat. Bkg. Asso. v. Connelly) 7 Wall. 17, 19 L. ed. 57; Bank of New York v. New York County, 7 Wall. 26, 19 L. ed. 60; Texas v. White, 7 Wall. 725, 19 L. ed. 237; Cooley, Const. Lim. 7th ed. p. 683; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Am-

brosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; Jones v. Keep, 19 Wis. 390; Swift v. Cornes, 20 Wis. 398; Sayles v. Davis, 22 Wis. 227; Fifield v. Close, 15 Mich. 505; State ex rel. Lakey v. Garton, 32 Ind. 1, 2 Am. Rep. 315.

The franchise to be a corporation is a means employed by the state government in the exercise of its powers and functions.

M'Culloch v. Maryland, 4 Wheat. 410, 4 L. ed. 602; Angell & A. Priv. Corp. 10th ed. p. 23; Hale v. Henkel, 201 U. S. 43, 50 L. ed. 652, 26 Sup. Ct. Rep. 370; California v. Southern P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

The corporation tax law, if the tax falls upon "carrying on or doing business," must fail for want of equality and uniformity in the tax thereby imposed.

State, Agens, Prosecutor, v. Newark, 37 N. J. L. 415, 18 Am. Rep. 729; Re Washington Ave. 69 Pa. 352, 8 Am. Rep. 255; Kentucky R. Tax Cases, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Rep. 57; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233; Michigan C. R. Co. v. Powers, 201 U. S. 245, 50 L. ed. 744, 26 Sup. Ct. Rep. 459; Adams v. Kuykendall, 83 Miss. 571, 35 So. 830; State v. Ide, 35 Wash. 576, 67 L.R.A. 280, 102 Am. St. Rep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

The corporation tax law is unequal in its operation, in that it taxes corporations, joint stock companies and associations, and exempts individuals and co-partnerships carrying on the same business and deriving net income from the same sources as in the case of such bodies.

Knowlton v. Moore, 178 U. S. 109, 44 L. ed. 996, 20 Sup. Ct. Rep. 747; State v. Ide, 35 Wash. 576, 67 L.R.A. 280, 102 Am. St. Rep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

Requiring a corporation to make a return under penalty for failure to do so constitutes a search within the meaning of the 4th Amendment.

Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524; Hale v. Henkel, 201 U. S. 43, 50 L. ed. 652, 26 Sup. Ct. Rep. 370; Clinton v. Phillips, 58 Ill. 102, 11 Am. Rep. 52.

To engage in interstate commerce is a constitutional right, and not a privilege; therefore Congress cannot prohibit the exercise of such right.

Crutcher v. Kentucky, 141 U. S. 47, 35 L. ed. 649, 11 Sup. Ct. Rep. 851; Reid v. Colorado, 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; Employers' Liability Cases (Howard v. Illinois C. R. Co.) 207 U. S. 463, 52 L. ed. 297, 28 Sup. Ct. Rep. 141; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; Paul v. Virginia, 8 Wall. 168, 19 L. ed. 357; Pullman Co. v. Kansas, 216 U. S. 56, 54 L. ed. 378, 30 Sup. Ct. Rep. 232.

The power to regulate does not include the power to prohibit.

Miller v. Jones, 80 Ala. 89; Bronson v. Oberlin, 41 Ohio St. 476, 52 Am. Rep. 90; Ex parte Patterson, 42 Tex. Crim. Rep. 256, 51 L.R.A. 654, 58 S. W. 1011; Duckwall v. New Albany, 25 Ind. 283; McConvill v. Jersey City, 39 N. J. L. 38; People v. Gadway, 61 Mich. 285, 1 Am. St. Rep. 578, 28 N. W. 101; Mernaugh v. Orlando, 41 Fla. 433, 27 So. 34; Re Hauck, 70 Mich. 396, 38 N. W. 275; State v. DeBar, 58 Mo. 395; Sweet v. Wabash, 41 Ind. 7; Andrews v. State, 3 Heisk. 165, 8 Am. Rep. 8; Ex parte Byrd, 84 Ala. 17, 5 Am. St. Rep. 328, 4 So. 397; State, Mühlenbrinck, Prosecutor, v. Long Branch, 42 N. J. L. 364.

If Congress cannot tax the business of interstate commerce or interstate commerce itself, it is hard to conceive how it can tax the privilege of doing such business.

Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190.

Mr. *J. B. Foraker* argued the cause and filed a brief for appellant in No. 420:

The measure of the tax must have some natural, legal, appropriate relation to the thing taxed; otherwise there may result inequality and injustice. This, of itself, is sufficient reason for refusing so to construe this law as to lay the tax on the corporation, or its franchise, or its facility, the result of which would, of necessity, be the grossest inequality.

Knowlton v. Moore, 178 U. S. 76, 44 L. ed. 983, 20 Sup. Ct. Rep. 747.

If the law be construed to lay the tax on the corporation, its franchise, or its facility to transact business, we cannot possibly have uniformity of operation.

Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 159, 41 L. ed. 669, 17 Sup. Ct. Rep. 255.

If the law be construed to lay the tax on the franchise to be a corporation, then at once arises the question whether it is not unconstitutional because of an infringement upon the sovereign right of the state to grant franchises to be corporations.

California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Veazie Bank v. Fenno, 8 Wall. 547, 19 L. ed. 487.

Corporations and their franchises, created by the states, to act as agencies or instrumentalities of state governments, cannot be made the subject of Federal taxation, either directly or indirectly.

The Binghamton Bridge (Chenango Bridge Co. v. Binghamton Bridge Co.) 3 Wall. 51, 18 L. ed. 137; New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co. 115 U. S. 663, 29 L. ed. 521, 6 Sup. Ct. Rep. 252.

To say that a business shall be taxed, as an occupation, when found in the hands of a corporation, and that it shall go exempt from taxation when found next door, in the hands of a copartnership or an individual, is purely arbitrary and manifestly unreasonable and unjust.

American Sugar Ref. Co. v. Louisiana, 179 U. S. 92, 45 L. ed. 103, 21 Sup. Ct. Rep. 43; Billings v. Illinois, 188 U. S. 102, 47 L. ed. 403, 23 Sup. Ct. Rep. 272; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 155, 41 L. ed. 668, 17 Sup. Ct. Rep. 255.

Mere words and names will not be allowed to change the legal effect of a plain statutory provision, or alter the familiar rules of construction.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 580, 39 L. ed. 818, 15 Sup. Ct. Rep. 673; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638.

The search and seizure provided for in this corporation tax measure are unreasonable.

Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524; Entick v. Carrington, 19 How. St. Tr. 1029; Hale v. Henkel, 201 U. S. 43, 44, 50 L. ed. 652, 653, 26 Sup.

Ct. Rep. 370; Re Pacific R. Commission, 32 Fed. 250; Re Comingore, 96 Fed. 557, affirmed in 177 U. S. 470, 44 L. ed. 850, 20 Sup. Ct. Rep. 701.

Messrs. *Alton C. Dustin, George B. Siddall, Arthur F. Odlin,* and *Richard Inglis* also filed a brief for appellant in No. 420:

The name whereby a tax is called is not controlling.

Nichol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678; Home Sav. Bank v. Des Moines, 205 U. S. 503, 51 L. ed. 901, 27 Sup. Ct. Rep. 571; Delaware, L. & W. R. Co. v. Pennsylvania, 198 U. S. 341. 49 L. ed. 1077, 25 Sup. Ct. Rep. 669; Fairbank v. United States, 181 U. S. 283, 45 L. ed. 862, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Powers v. Detroit, G. H. & M. R. Co. 201 U. S. 543, 50 L. ed. 860, 26 Sup. Ct. Rep. 556; Robbins v. Taxing Dist. 120 U. S. 489, 30 L. ed. 694, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592; Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 30 Sup. Ct. Rep. 1118; Leloup v. Mobile, 127 U. S. 640, 32 L. ed. 311, 2 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; Cook v. Pennsylvania, 97 U. S. 566, 24 L. ed. 1015; Almy v. California, 24 How. 169, 16 L. ed. 644; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678.

The tax is an income tax.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; Nicol v. Ames, 173 U. S. 509, 519, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Rep. 522; Knowlton v. Moore, 175 U. S. 41, 52, 53, 79–83, 44 L. ed. 969, 974, 975, 984–986, 20 Sup. Ct. Rep. 747; Fairbank v. United States, 181 U. S. 283, 296. 45 L. ed. 862, 868, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135; Patton v. Brady, 184 U. S. 608, 618, 46 L. ed. 713, 718, 22 Sup. Ct. Rep. 493; Thomas v. United States, 192 U. S. 363, 370, 48 L. ed. 481,

483, 24 Sup. Ct. Rep. 305; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Hafemann v. Gross, 199 U. S. 342, 350, 50 L. ed. 220, 225, 26 Sup. Ct. Rep. 80.

It is necessary to recognize that the Pollock Case repudiated the principle upon which Hylton v. United States, 3 Dall. 171, 1 L. ed. 556, and also Springer v. United States, 102 U. S. 586, 26 L. ed. 253, were decided.

With these two cases out of the way, the remaining decisions fall naturally into two classes and the constitutional classification becomes fairly clear.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; Merchants' Nat. Bank v. United States, 101 U. S. 1, 25 L. ed. 979; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Treat v. White, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Rep. 611; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Cornell v. Coyne, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Rep. 383; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

The distinction between all of the above taxes and the present tax is that each of the above taxes was laid with respect to some particular thing. They were specific, while this is general. They were imposed because of the exercise of some particular right or privilege, while this tax is upon income generally, imposed solely by reason of ownership.

Thomas v. United States, 192 U. S. 363, 370, 48 L. ed. 481, 483, 24 Sup. Ct. Rep. 305.

The states cannot interfere with the full and free exercise of the powers delegated to the national government.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451; Bank

Tax Case (New York ex rel. Bank of Commonwealth v. Tax & A. Comrs.) 2 Wall. 200, 17 L. ed. 793; The Banks v. New York (New York ex rel. Bank of N. Y. Nat. Bkg. Asso. v. Connelly) 7 Wall. 16, 19 L. ed. 57; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Union P. R. Co. v. Peniston, 18 Wall. 5, 29–31, 21 L. ed. 787, 791, 792.

The national government cannot interfere with the full and free exercise of the powers reserved to the states.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 584, 39 L. ed. 759, 820, 15 Sup. Ct. Rep. 673; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; Texas v. White, 7 Wall. 700, 725, 19 L. ed. 227, 237; Briscoe v. Bank of the Commonwealth, 11 Pet. 317, 9 L. ed. 732.

The powers of the separate states within their own spheres are as complete as are the sovereignty and independence of the general government within its sphere.

Cooley, Const. Lim. 7th ed. p. 64; United States v. Baltimore & O. R. Co. 17 Wall. 322, 327, 21 L. ed. 597, 599; License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500.

If classification of subjects for taxation is not founded upon reason, but is wholly arbitrary, it takes the property of the citizen without due process of law, contrary to the 5th Amendment.

Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 236, 33 L. ed. 892, 894, 10 Sup. Ct. Rep. 533; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 151, 160, 41 L. ed. 667, 670, 17 Sup. Ct. Rep. 255; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 293, 295, 42 L. ed. 1037, 1042, 1043, 18 Sup. Ct. Rep. 594; Nicol v. Ames, 173 U. S. 509, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Rep. 522.

Mr. *John G. Johnson* argued the cause, and, with Messrs. *Frederic Jesup Stimson, Lawrence M. Stockton,* and *Harris Livermore,* filed a brief for appellants in Nos. 425 and 457:

Both the 5th and 14th Amendments to the Federal Constitution presuppose equality before the law.

Harding v. People, 160 Ill. 459, 32 L.R.A. 447, 52 Am. St. Rep. 344, 43 N. E. 624; Carroll v. Greenwich Ins. Co. 199 U. S. 401, 410, 50 L. ed. 246, 26 Sup. Ct. Rep. 66; Mobile & O. R. Co. v. Tennessee, 153 U. S. 486, 506, 38 L. ed. 793, 800, 14 Sup. Ct. Rep. 968; Cooley, Const. Lim. 6th ed. pp. 479–483, 490.

The states cannot, directly or indirectly, burden the exercise by Congress of the powers committed to it by the Constitution, nor may Congress burden the agencies or instrumentalities employed by the states in the exercise of their powers.

The Collector v. Day (Buffington v. Day) 11 Wall. 113–124, 20 L. ed. 122–126; Fifield v. Close, 15 Mich. 505; Cooley, Const. Lim. 6th ed. p. 592.

A state may not tax the corporate franchise of a Federal corporation (M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; California v. Central P. R. Co. 127 U. S. 41, 32 L. ed. 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073), nor may it tax its business if it be a Federal function, such, for instance, as interstate commerce; nor can a state impose a franchise tax even on the stock of corporations incorporated in other states and doing business in the state imposing the tax, if it do not tax its own corporations in the same manner.

Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190.

The creation of a corporation appertains to sovereignty.

M'Culloch v. Maryland, 4 Wheat. 410, 4 L. ed. 602.

Mr. *Frederic Jesup Stimson* also argued the cause on reargument, and with Messrs. *John G. Johnson, Lawrence M. Stockton, Harris Livermore,* and *J. Grant Forbes,* filed a brief for appellants, in Nos. 425 and 457:

The states are not subordinate, not "a part" of the Federal government in the sense of being a part of a homogeneity, but are sovereignties of equal dignity, indestructible, equally important, and in their own demesne equally supreme.

Texas v. White, 7 Wall. 700, 725, 19 L. ed. 227, 237; Lane County v. Oregon, 7 Wall. 71, 76, 19 L. ed. 101, 104; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620,

623, 17 L. ed. 451, 452; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 583, 584, 39 L. ed. 759, 820, 15 Sup. Ct. Rep. 673; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122.

The United States have no power under the Constitution to tax either the instrumentalities or the property of a state.

Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151, 155, 29 L. ed. 845, 846, 6 Sup. Ct. Rep. 670; Cooley, Const. Law, 3d ed. p. 61.

Is there anything in the reasoning of Mr. Justice Bradley in California v. Central P. R. Co. 127 U. S. 1, 40, 41, 32 L. ed. 150, 157, 158, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073, which indicates that it is to be applied to the state government taxing a Federal corporate franchise, and not to the converse proposition?

A tax on the income or traffic made under the franchise is not different from a tax on the franchise.

Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593.

Unless the Federal government is given wider and other powers of taxation by the Constitution, despite the 5th Amendment, than are given to the commonwealth by the practically unlimited provisions for taxation in the Constitution of Massachusetts, the decisions of the supreme court of Massachusetts are decisive of the point that the "commodity" of having a capital stock represented by assignable shares is not taxable.

Gleason v. McKay, 134 Mass. 419; O'Keeffe v. Somerville, 190 Mass. 110, 112 Am. St. Rep. 316, 76 N. E. 457, 5 A. & E. Ann. Cas. 684; Minot v. Winthrop, 162 Mass. 113, 26 L.R.A. 259, 38 N. E. 512; Opinions of Justices, 196 Mass. 603, 85 N. E. 545.

Mr. *Frederic R. Coudert* filed a brief for appellants in Nos. 431 and 432:

The tax is one upon the franchise or right to be a corporation, granted by the state.

Mercantile Nat. Bank v. New York, 121 U. S. 138, 160, 30 L. ed. 895, 7 Sup. Ct. Rep. 826; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Society

for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907.

Neither the state courts nor the legislatures, by giving the tax a particular name, or by the use of some form of words, can take away our duty to consider its nature and effect.

Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 227, 52 L. ed. 1037, 28 Sup. Ct. Rep. 638.

To characterize the tax as an occupation or business excise is to pervert history. Such taxes are a special class, common in England and the United States.

Dowell, History of Taxation; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Chesebrough v. United States, 192 U. S. 253, 48 L. ed. 432, 24 Sup. Ct. Rep. 262; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305.

Where the Federal government has an exclusive right of control or regulation, that right cannot be taxed by a state.

M'Culloch v. Maryland, 4 Wheat. 316, 435, 4 L. ed. 579, 608; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451; The Banks v. New York (New York ex rel. Bank of N. Y. Nat. Bkg. Asso. v. Connelly) 7 Wall. 16, 19 L. ed. 57; Moran v. New Orleans, 112 U. S. 69, 28 L. ed. 653, 5 Sup. Ct. Rep. 38; Harman v. Chicago, 147 U. S. 396, 37 L. ed. 216, 13 Sup. Ct. Rep. 306; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Dobbins v. Erie County. 16 Pet. 435, 10 L. ed. 1022; People ex rel. Edison Electric Light Co. v. Campbell, 138 N. Y. 543, 20 L.R.A. 453, 34 N. E. 370; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111.

The cases in which this court has applied the same principle to the protection of the state governments against the Federal government are:

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Mercantile Nat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759,

15 Sup. Ct. Rep. 673; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; South Carolina v. United States, 199 U. S. 437, 449, 468, 50 L. ed. 264, 272, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

See also, as to other inherent limitations upon Federal legislation:

United States v. Dewitt, 9 Wall. 41, 19 L. ed. 593; Keller v. United States, 213 U. S. 138, 53 L. ed. 737, 29 Sup. Ct. Rep. 470, 16 A. & E. Ann. Cas. 1066.

If the precise case here has not before arisen, its exact converse has, and if it be admitted, as it always has been, and still must be, that this principle of immunity is reciprocal, then indeed it must be conceded that this court has adjudicated the very question here involved.

California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

Even as a tax on franchises it is a tax on property, and hence direct. It is the settled law of this court that a corporate franchise is personal property.

Gulf & S. I. R. Co. v. Hewes, 183 U. S. 66, 46 L. ed. 86, 22 Sup. Ct. Rep. 26; Postal Teleg. Cable Co. v. Adams, 155 U. S. 696, 39 L. ed. 315, 5 Inters. Com. Rep. 1, 15 Sup. Ct. Rep. 268, 360; Atlantic & P. Teleg. Co. v. Philadelphia, 190 U. S. 160, 47 L. ed. 995, 23 Sup. Ct. Rep. 817.

Mr. *Richard Reid Rogers* argued the cause and filed a brief for appellants in No. 442:

A grant of a corporate franchise is the exercise of a sovereign faculty.

California v. Central P. R. Co. 127 U. S. 1, 40, 32 L. ed. 150, 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

And this power was not alienated by the several states to the national government.

Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 9 L. ed. 709.

The states cannot even indirectly tax a corporate franchise granted by the national government.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 768, 6 L. ed. 211; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678; Weston v.

Charleston, 2 Pet. 449, 7 L. ed. 481; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 628, 17 L. ed. 454; Bank Tax Case (New York ex rel. Bank of Commonwealth v. Tax & A. Comrs.) 2 Wall. 200, 17 L. ed. 793; Owensboro Nat. Bank v. Owensboro, 173 U. S. 664, 43 L. ed. 850, 19 Sup. Ct. Rep. 537; First Nat. Bank v. Stone, 174 U. S. 438, 43 L. ed. 1038, 19 Sup. Ct. Rep. 876; California v. Central P. R. Co. 127 U. S. 41, 32 L. ed. 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 591, 18 L. ed. 229, 237.

In the respect stated, the state and Federal governments are upon an equal footing.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 128, 20 L. ed. 122, 127; Union P. R. Co. v. Peniston, 18 Wall. 5, 30, 21 L. ed. 787, 791; Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151, 162, 29 L. ed. 845, 849, 6 Sup. Ct. Rep. 670; Income Tax Cases (Pollock v. Farmers' Loan & T. Co.) 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Rep. 673; Knowlton v. Moore, 178 U. S. 41, 59, 44 L. ed. 969, 977, 20 Sup. Ct. Rep. 747; Plummer v. Coler, 178 U. S. 115, 117, 44 L. ed. 998, 999, 20 Sup. Ct. Rep. 829; Ambrosini v. United States, 187 U. S. 1, 7, 47 L. ed. 49, 52, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

The act of Congress is unconstitutional in so far as it attempts to impose a tax upon the franchises of foreign corporations, or, at least, upon their right to carry on a purely intrastate business,—a matter over which the Federal government has no control.

License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500; Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204, 210, 38 L. ed. 962, 965, 4 Inters. Com. Rep. 649, 14 Sup. Ct. Rep. 1087.

The tax is so unequal that, by definition, it is not a tax within the delegated power of Congress to impose.

Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 159, 41 L. ed. 666, 669, 17 Sup. Ct. Rep. 255; Southern R. Co. v. Greene, 216 U. S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247.

Messrs. *Charles H. Tyler, Owen D. Young, Barton E. Eames,* and *Randolph Frothingham* filed a brief for appellant in No. 443:

The care and management of real estate investments by a corporation do not constitute the carrying on or doing business.

People ex rel. Parker Mills v. Tax Comrs. 23 N. Y. 242; Re Alabama & C. R. Co. 9 Blatchf. 390, Fed. Cas. No. 124.

The act is invalid as laying a burden upon an instrumentality of the state.

California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Fifield v. Close, 15 Mich. 505; Smith v. Short, 40 Ala. 385; Warren v. Paul, 22 Ind. 276; Jones v. Keep, 19 Wis. 369; Union Bank v. Hill, 3 Coldw. 325; Moore v. Quirk, 105 Mass. 49, 7 Am. Rep. 499; United States v. Owens, 100 Fed. 70.

The act is invalid because of lack of equality.

Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. Rep. 431.

Messrs. *Jed L. Washburn, William D. Bailey,* and *Oscar Mitchell* filed a brief for appellant in No. 446:

As an excise tax, the same is invalid, not only as not being uniform throughout the United States, whether we say intrinsically or geographically, but because it is so fraught with discriminations, inequalities, and arbitrary exemptions as to be without the taxing power, and is obnoxious to the fundamental principles of our government.

Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95.

The tax that will fall upon the defendant, the Clark Iron Company, and operate to deplete the revenues distributable to its stockholders, falls upon its income by way of rentals and royalties from the use and occupation of its lands, and is therefore, within the decisions of this court, a tax upon the land itself,— a direct tax, unconstitutional and void.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed.

759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; State v. Evans, 99 Minn. 223, 108 N. W. 958, 9 A. & E. Ann. Cas. 520; Bainbridge, Mines & Minerals, Am. ed. p. 197; United States v. Gratiot, 14 Pet. 526, 10 L. ed. 573; 2 Snyder, Mines, chap. 2, p. 932; Offerman v. Starr, 2 Pa. St. 394, 44 Am. Dec. 211, 10 Mor. Min. Rep. 614; Moore v. Miller, 8 Pa. 273; Hyatt v. Vincennes Nat. Bank, 113 U. S. 408, 28 L. ed. 1009, 5 Sup. Ct. Rep. 573; Lehigh Zinc & I. Co. v. Bamford, 150 U. S. 665, 37 L. ed. 1215, 14 Sup. Ct. Rep. 219; Tennessee Oil, Gas & Mineral Co. v. Brown, 65 C. C. A. 524, 131 Fed. 696; Raynolds v. Hanna, 55 Fed. 783; Co. Litt. 53–b; Clegg v. Rowland, L. R. 2 Eq. 160, 35 L. J. Ch. N. S. 396, 14 L. T. N. S. 217, 14 Week. Rep. 530, 17 Eng. Rul. Cas. 725, 8 Mor. Min. Rep. 520.

As a tax laid only when the income is received by corporations, it is also subject to the charge that it is, in effect, an attempt to levy a tax upon the corporate franchises of such corporations, and, as such, it cannot be sustained.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Wisconsin C. R. Co. v. Price County, 133 U. S. 496, 33 L. ed. 687, 10 Sup. Ct. Rep. 341; Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; West River Bridge Co. v. Dix, 6 How. 507, 12 L. ed. 535; San Bernardino County v. Southern P. R. Co. 118 U. S. 417, 30 L. ed. 125, 6 Sup. Ct. Rep. 1144; Pollock v. Farmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Rep. 673.

The law not only denies equal protection, but operates to deprive parties of their property without due process of law, and ignores the provision that excessive fines shall not be imposed.

Cooley, Const. Lim. 6th ed. p. 434; Harding v. People, 160 Ill. 459, 32 L.R.A. 445, 52 Am. St. Rep. 344, 43 N. E. 624; Bank of Columbia v. Okely, 4 Wheat. 244, 4 L. ed. 561; San Bernardino County v. Southern P. R. Co. 118 U. S. 423, 30 L. ed. 127, 6 Sup. Ct. Rep. 1144; Ex parte Young, 209 U. S.

123, 52 L. ed. 714, 13 L.R.A.(N.S.) 932, 28 Sup. Ct. Rep. 441, 14 A. & E. Ann. Cas. 764.

Mr. *Charles Howard Williams* argued the cause and filed a brief for appellants in No. 456:

The tax imposed is an income tax, pure and simple; for, although the name is changed, the court will regard the substance rather than the name. The tax is therefore invalid.

Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 27, 54 L. ed. 355, 366, 30 Sup. Ct. Rep. 190; Home Sav. Bank v. Des Moines, 205 U. S. 510, 51 L. ed. 906, 27 Sup. Ct. Rep. 571; Income Tax Cases (Pollock v. Farmers' Loan & T. Co.) 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912.

Considered as an excise, the tax is not uniform. It does not apply to all of a class alike, neither is it imposed on all of a class throughout the United States. It is therefore invalid.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; United States v. Singer, 15 Wall. 111, 121, 21 L. ed. 49, 51; Head Money Cases (Edye v. Robertson) 112 U. S. 580, 594, 28 L. ed. 798, 802, 5 Sup. Ct. Rep. 247; Cooley, Taxn. p. 215; M'Culloch v. Maryland, 4 Wheat. 316, 435, 4 L. ed. 579, 608.

The tax is not equal on all members of the classes it seeks to reach, exempting without basis some and taxing others. It is therefore invalid.

Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455; Cooley, Const. Lim. pp. 598, 607, 615; People ex rel. Detroit & H. R. Co. v. Salem, 20 Mich. 473, 4 Am. Rep. 400; Albany City Nat. Bank v. Maher, 20 Blatchf. 341, 9 Fed. 884; Mugler v. Kansas, 123 U. S. 623, 661, 31 L. ed. 205, 210, 8 Sup. Ct. Rep. 273; Coe v. Errol, 116 U. S. 517, 524, 529, 29 L. ed. 715, 717, 719, 6 Sup. Ct. Rep. 475; Soon Hing v. Crowley, 113 U. S. 703, 709, 28 L. ed. 1145, 1147, 5 Sup. Ct. Rep. 730; Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 560, 46 L. ed. 679, 690, 22 Sup. Ct. Rep. 431; Cook v. Marshall County, 196 U. S. 274, 49 L. ed. 476, 25 Sup. Ct. Rep. 233; Seaboard Air Line R. Co. v. Seegers, 207 U. S. 76, 52 L. ed. 109, 28 Sup. Ct. Rep. 28.

In the same way the tax offends the due-process clause of the Constitution. It in effect assesses certain corporations for the benefit of others which are exempted. It is therefore invalid.

Lowell v. Boston, 111 Mass. 454, 15 Am. Rep. 39; Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455; Hurtado v. California, 110 U. S. 516, 535, 28 L. ed. 232, 238, 4 Sup. Ct. Rep. 111, 202; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Rep. 579; Giozza v. Tiernan, 148 U. S. 657, 662, 37 L. ed. 599, 601, 13 Sup. Ct. Rep. 721; Caldwell v. Texas, 137 U. S. 692, 697, 34 L. ed. 816, 818, 11 Sup. Ct. Rep. 224; Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561; Madisonville Traction Co. v. St. Bernard Min. Co. 196 U. S. 239, 49 L. ed. 462, 25 Sup. Ct. Rep. 251.

The effect of the tax under the provisions of the present law is to create favored classes, contrary to the provisions of the Constitution.

Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Rep. 579.

The present tax cannot stand as an excise on the privilege to exist, for that right comes from the state, and is not taxable by the Federal government.

Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699; Texas v. White, 7 Wall. 700, 19 L. ed. 227; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 127, 20 L. ed. 122, 126; Pollock v. Farmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Rep. 673; South Carolina v. United States, 199 U. S. 453, 50 L. ed. 266, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

The administrative features of the act are invalid because they offend the provisions of articles 4 and 5 of the Amendment to the Constitution.

Boyd v. United States, 116 U. S. 627, 29 L. ed. 749, 6 Sup. Ct. Rep. 524; People ex rel. Ferguson v. Reardon, 197 N. Y. 244, 27 L.R.A.(N.S.) 141, 134 Am. St. Rep. 871, 90 N. E. 829; Robson v. Doyle, 191 Ill. 566, 61 N. E. 435; Counselman v. Hitchcock, 142 U. S. 562, 35 L. ed. 1113, 3 Inters. Com. Rep. 816, 12 Sup. Ct. Rep. 195; People ex rel. Taylor v. Forbes, 143 N. Y. 219, 38 N. E. 303; People ex rel. Lewisohn v. O'Brien, 176 N. Y. 253, 68 N. E. 353, 15 Am. Crim. Rep. 97; Emery's Case, 107 Mass. 172, 9 Am. Rep. 22.

Mr. *Howard H. Williams* also filed a brief for appellants in No. 456.

Solicitor General *Bowers* argued the cause, and, with Attorney General *Wickersham,* filed a brief (by special leave) for the United States:

Numerous decisions of this court show that this tax is an excise upon the conduct or transaction of business. They may be put for convenience into five groups:

(1) A case identical with the present, holding that a tax declared in the statute to be laid on business in an amount "equivalent to" a certain percentage of income is an excise on the transaction of the business.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

(2) Cases even stronger than the Spreckles Case, in that they hold that a tax laid in terms on the income of a business—instead of being laid in terms upon the business in an amount equal or equivalent to a percentage of the income—is still an excise upon the business.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Erie R. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223; Springer v. United States, 102 U. S. 586, 26 L. ed. 253.

(3) Cases holding various taxes to be excises on business, though they are laid in terms upon property engaged in the business.

Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; United States v. Singer, 15 Wall. 111, 21 L. ed. 49; Merchants' Nat. Bank v. United States, 101 U. S. 1, 25 L. ed. 979.

(4) A case exhibiting an excise on business under a statute which, instead of laying the tax in terms on property engaged in the business, required the tax to be equal to a certain percentage of property so engaged.

Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897.

(5) Cases which, while not relating to business, classify as excises various taxes imposed by Congress upon special trans-

actions concerning property, or upon the enjoyment or exercise of particular privileges or advantages connected with property.

Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; United States v. Perkins, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; New York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522.

The established rule that the states may tax property used in interstate commerce, though they may not tax the business of interstate commerce or income from that business, shows that a tax upon the business is different from a tax upon the property employed in that business, and so is not direct.

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 7 Sup. Ct. Rep. 1118; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Rep. 595, 11 Sup. Ct. Rep. 876; Adams Exp. Co. v. Ohio State Auditor, 166 U. S. 185, 41 L. ed. 965, 17 Sup. Ct. Rep. 604; Fargo v. Hart, 193 U. S. 490, 48 L. ed. 761, 24 Sup. Ct. Rep. 498.

A tax on the business of the company is not, in legal view, a tax on the shares of the company's stock or on the income from those shares.

Logan County v. United States, 169 U. S. 255, 42 L. ed. 737, 18 Sup. Ct. Rep. 361; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; United States v. Perkins, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803.

Even a tax laid directly on corporate property is not a tax on the separate shares of the corporation's stock.

Owensboro Nat. Bank v. Owensboro, 173 U. S. 664, 43 L. ed. 850, 19 Sup. Ct. Rep. 537; New Orleans v. Citizens' Bank, 167 U. S. 371, 42 L. ed. 202, 17 Sup. Ct. Rep. 905; Home Sav. Bank v. Des Moines, 205 U. S. 503, 51 L. ed. 901, 27 Sup. Ct. Rep. 571.

The converse proposition, that a tax on shares is not a tax on the property of the company, is also settled.

Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; New York v. Tax & A. Comrs. 4 Wall. 244, 18 L. ed. 344; Bradley v. Illinois, 4 Wall. 459, 18 L. ed. 433; First Nat. Bank v. Kentucky, 9 Wall. 353, 19 L. ed. 701; Cleveland Trust Co. v. Lander, 184 U. S. 111, 46 L. ed. 456, 22 Sup. Ct. Rep. 394.

The tax does not become direct in the special case of a company engaged mainly, or even solely, in the business of handling or dealing in real estate.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Com. v. Hamilton Mfg. Co. 12 Allen, 298; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305.

The tax is not an infraction of the general power of the states to authorize the formation of corporations and joint stock companies.

Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Erie R. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Veazie Bank v. Fenno, 8 Wall. 533, 547, 19 L. ed. 482, 487; Knowlton v. Moore, 178 U. S. 41, 59–61, 44 L. ed. 969, 977, 978, 20 Sup. Ct. Rep. 747; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

The adjudications of this court concerning state taxation of the business or franchises of a corporate agent of the United States are irrelevant to the question of the power of the United States to tax the business or franchises of miscellaneous corporations formed under state laws.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Thomson v. Union P. R. Co. 9 Wall. 579, 19 L. ed. 792; Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Western U. Teleg. Co. v. Texas, 105 U. S. 460, 26 L. ed. 1067.

Even if a state should actually assume the operation of a railroad, whether directly or indirectly, through a special corporate agency, or should assume to do any other kind of business, the operations of the state in the business would be taxable by the United States.

South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

If the business of a public-service company, incorporated by a state, could be deemed an activity of the state itself, and even if such activity of the state could be held to be beyond the taxing power of the United States unless the state should assent to the tax, still such assent by the state to taxation of the business by the United States would be inferred, in the absence of legislative declaration to the contrary by the state.

Reagan v. Mercantile Trust Co. 154 U. S. 413, 38 L. ed. 1028, 4 Inters. Com. Rep. 575, 14 Sup. Ct. Rep. 1060.

The tax is not imposed upon state or municipal bonds, or upon the income of such bonds, forming part of the business assets of the company whose business is taxed; and the company's income from such bonds is to be included in the computation of its net income.

Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Merchants' Nat. Bank v. United States, 101 U. S. 1, 25 L. ed. 979; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829; Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; New York v. Tax & A. Comrs. 4 Wall. 244, 18 L. ed. 344; Bradley v. Illinois, 4 Wall. 459, 18 L. ed. 433; First Nat. Bank v. Kentucky,

9 Wall. 353, 19 L. ed. 701; Cleveland Trust Co. v. Lander, 184 U. S. 111, 46 L. ed. 456, 22 Sup. Ct. Rep. 394; Ficklen v. Taxing Dist. 145 U. S. 1, 36 L. ed. 601, 4 Inters. Com. Rep. 79, 12 Sup. Ct. Rep. 810; Tiernan v. Rinker, 102 U. S. 127, 26 L. ed. 104.

The constitutional requirement of uniformity in "all duties, imposts, and excises" imposed by Congress (clause 1 of § 8 of art. 1, of the Constitution) calls for no more than geographical uniformity.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

The propriety of classifying corporations and joint stock companies together, for like taxation, is illustrated, and indeed concluded, by Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 19 L. ed. 1029.

An excise is least amenable, of all taxes, to the rule of uniformity; and in the enactment of excises the greatest freedom of classification has been immemorially exercised both by Congress and by other legislatures.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; United States v. Singer, 15 Wall. 111, 21 L. ed. 49; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Cornell v. Coyne, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Rep. 383; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 19 L. ed. 1029; Beers v. Glynn, 211 U. S. 477, 53 L. ed. 290, 29 Sup. Ct. Rep. 186; New York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736; Armour Packing Co. v. Lacy, 200 U. S. 226, 50 L. ed. 451, 26 Sup. Ct. Rep. 232; New York ex rel. Metropolitan Street R. Co. v. New York State Tax Comrs. 199 U. S. 1, 50 L. ed. 65, 25 Sup. Ct. Rep. 705, 4 A. & E. Ann. Cas. 381; Savannah, T. & I. of H. R. Co. v. Savannah, 198 U. S. 392, 49 L. ed. 1097, 25 Sup. Ct. Rep. 690; American Sugar

Ref. Co. v. Louisiana, 179 U. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; Pacific Exp. Co. v. Seibert, 142 U. S. 339, 35 L. ed. 1035, 3 Inters. Com. Rep. 810, 12 Sup. Ct. Rep. 250; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; Otis v. Parker, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

None of the special rules prescribed by the taxing statute concerning exemptions or concerning application or computation of the tax produces any lack of necessary uniformity.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; Mercantile Nat. Bank v. New York, 121 U. S. 138, 30 L. ed. 895, 7 Sup. Ct. Rep. 826; American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233; Petersburg v. Petersburg Benev. Mechanics' Asso. 78 Va. 431; Mercantile Nat. Bank v. Hubbard, 98 Fed. 465; First Nat. Bank v. Chapman, 173 U. S. 205, 43 L. ed. 669, 19 Sup. Ct. Rep. 407; United States v. Singer, 15 Wall. 111, 21 L. ed. 49; Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; District of Columbia v. Brooke, 214 U. S. 138, 53 L. ed. 941, 29 Sup. Ct. Rep. 560; New York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; New York ex rel. Metropolitan Street R. Co. v. New York State Tax Comrs. 199 U. S. 1, 50 L. ed. 65, 25 Sup. Ct. Rep. 705, 4 A. & E. Ann. Cas. 381.

The company required to pay the tax is not subject to any unreasonable search or seizure by any of the administrative provisions of the statute.

Re Chapman, 166 U. S. 661, 41 L. ed. 1154, 17 Sup. Ct.

Rep. 677; Adams v. New York, 192 U. S. 585, 48 L. ed. 575, 24 Sup. Ct. Rep. 372.

Mr. *William D. Guthrie* argued the cause, and, with Messrs. *Victor Norawetz* and *Howard Van Sinderen,* filed a brief for appellees in No. 410:

A tax upon income derived from the carrying on or doing business is an excise, and not a direct tax, within the meaning of the Constitution.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 443, 19 L. ed. 95, 98; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 598, 25 L. ed. 647, 648; Springer v. United States, 102 U. S. 586, 598, 26 L. ed. 253, 257; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 411, 48 L. ed. 496, 501, 24 Sup. Ct. Rep. 376; South Carolina v. United States, 199 U. S. 437, 454, 50 L. ed. 261, 266, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

The provision of the 5th Amendment, that no person shall be deprived of property without due process of law, is sufficient to prevent any such impairment or destruction of contract rights.

Sinking Fund Cases, 99 U. S. 700, 718, 25 L. ed. 496, 501; United States v. Union P. R. Co. 160 U. S. 1, 33, 40 L. ed. 319, 330, 16 Sup. Ct. Rep. 190.

The question now presented is whether or not income can nevertheless be indirectly taxed by means of a so-called special excise tax upon the carrying on or doing business by corporations; in other words, by merely changing the name of the tax.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 654, 39 L. ed. 759, 844, 15 Sup. Ct. Rep. 673.

Undoubtedly, public utilities, when owned by the state itself, and not conducted by it as a private business for profit, ought not to be taxable by Congress. But it is well established that such public utilities, when owned and operated by private corporations, or by individuals for purposes of profit, are proper subjects of taxation (Union P. R. Co. v. Peniston, 18 Wall. 5, 31, 21 L. ed. 787, 791), and that, if owned and operated by the state as a business for profit, they become subject to taxation by Congress within the principle of South Carolina v.

United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

A special franchise from the state of New York is entirely distinct from the so-called franchise to be a corporation.

New York v. Bryan, 196 N. Y. 163, 89 N. E. 467; People v. O'Brien, 111 N. Y. 47, 2 L.R.A. 255, 7 Am. St. Rep. 684, 18 N. E. 692.

A Federal tax on the franchise to condemn property and to operate the railroad in the state of New York might come within the ruling of the court in the case of California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; but that ruling certainly would not apply to a tax upon the business of the railroad corporation. This case did not overrule or qualify Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787.

A tax upon the mere carrying on of business, levied impartially and uniformly upon all corporations, is essentially different from a tax on so-called special franchises, and from a tax on the franchise to be a corporation, or to carry on business in a corporate form.

There is a serious question as to whether Congress may select state corporations as a separate class, and impose upon them an excise tax "with respect to the carrying on or doing business by such corporation," while exempting or not similarly taxing individuals and copartnerships engaged in carrying on or doing identically the same business, under substantially like conditions.

Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247.

If a state, aside from its power to create, regulate, or exclude corporations, could not discriminate against corporations and in favor of individuals or partnerships without violating the 14th Amendment, then any attempt by Congress so to discriminate may likewise be unconstitutional under the 5th Amendment.

Carroll v. Greenwich Ins. Co. 199 U. S. 401, 410, 50 L. ed. 246, 250, 26 Sup. Ct. Rep. 66.

The classification of corporations as a separate class by the states has been sustained on grounds which are, at least partly, unavailable in support of an act of Congress.

Delaware Railroad Tax, 18 Wall. 206, 21 L. ed. 888; Bell's

Gap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 33 L. ed. 892, 895, 10 Sup. Ct. Rep. 533; Home Ins. Co. v. New York, 134 U. S. 594, 606, 33 L. ed. 1025, 1031, 10 Sup. Ct. Rep. 593; New York v. Roberts, 171 U. S. 658, 665, 43 L. ed. 323, 326, 19 Sup. Ct. Rep. 58; Florida C. R. Co. v. Reynolds, 183 U. S. 471, 477, 46 L. ed. 283, 286, 22 Sup. Ct. Rep. 176; Berea College v. Kentucky, 211 U. S. 45, 54, 53 L. ed. 81, 85, 29 Sup. Ct. Rep. 33.

Congress cannot constitutionally impose an excise tax measured by nontaxable income.

Pollock v. Farmers' Loan & T. Co. 158 U. S. 635, 39 L. ed. 1125, 15 Sup. Ct. Rep. 912.

If the argument now advanced on behalf of the United States be sound, many of the decisions of the court sustaining excise taxes on corporations have proceeded on entirely erroneous reasoning.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 410, 417, 48 L. ed. 496, 500, 503, 24 Sup. Ct. Rep. 376; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; Southern R. Co. v. Greene, 216 U. S. 400, 416, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247; Home Sav. Bank v. Des Moines, 205 U. S. 503, 519, 51 L. ed. 901, 910, 27 Sup. Ct. Rep. 571; Louisville & J. Ferry Co. v. Kentucky, 188 U. S. 385, 396, 398, 47 L. ed. 513, 518, 519, 23 Sup. Ct. Rep. 463; State Tonnage Tax Cases (Cox v. Lott) 12 Wall. 204, 217, 20 L. ed. 370, 374.

The underlying principle of these decisions is that a license or occupation tax cannot be imposed by a state upon foreign corporations, measured by the amount of nontaxable property or the amount of nontaxable interstate business of the corporations, and that any such attempt would establish an unconstitutional basis of classification for purposes of taxation; in other words, that a tax cannot be measured by nontaxable property or income. If we apply the same principle to the case at bar, it must follow that Congress cannot, directly or indirectly, measure an excise tax on corporations or individuals by property or income which is not taxable at all, or only taxable by a direct and apportioned tax.

The act of August 5, 1909, should be construed as imposing an excise tax only upon income derived from the carrying on or doing business.

United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U. S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Rep. 527; Kepner v. United States, 195 U. S. 100, 125, 49 L. ed. 114, 122, 24 Sup. Ct. Rep. 797, 1 A. & E. Ann. Cas. 655; United States v. Nix, 189 U. S. 199, 205, 47 L. ed. 775, 777, 23 Sup. Ct. Rep. 495; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 417, 48 L. ed. 496, 503, 24 Sup. Ct. Rep. 376.

Congress presumably deemed it unjust to compel a holding company to pay a tax upon income derived from dividends of other companies which had already paid the tax, although if a corporation has been organized for the purpose of carrying on the business of holding securities, there is, perhaps, no reason why it cannot be subjected to taxation upon net income or profits derived from that occupation or business.

People ex rel. Vandervoort Realty Co. v. Glynn, 194 N. Y. 389, 87 N. E. 434.

The exception or exclusion of dividends from stocks of other corporations does not signify that the general clause "from all sources" must be given any broader interpretation than if no such exception had been made.

Baggaley v. Pittsburg & L. S. Iron Co. 33 C. C. A. 202, 62 U. S. App. 683, 90 Fed. 638; Mullins v. Surrey County, L. R. 5 Q. B. Div. 173; West Derby Union v. Metropolitan L. Assur. Soc. [1897] A. C. 652, 66 L. J. Ch. N. S. 726, 77 L. T. N. S. 284, 61 J. P. 820; Georgia R. & Bkg. Co. v. Smith, 128 U. S. 174, 181, 32 L. ed. 377, 380, 9 Sup. Ct. Rep. 47; Interstate Commerce Commission v. Baird, 194 U. S. 25, 36, 37, 48 L. ed. 860, 865, 866, 24 Sup. Ct. Rep. 563; American Exp. Co. v. United States, 212 U. S. 522, 534, 53 L. ed. 635, 640, 29 Sup. Ct. Rep. 315.

Under state laws imposing taxes upon the capital of corporations employed in business, or receipts derived from business, it is quite often necessary to make similar inquiry into the character and use of their property and the conduct of their businesses.

People ex rel. Singer Mfg. Co. v. Wemple, 150 N. Y. 46, 44 N. E. 787; People ex rel. Chicago Junction R. & Union Stock-

yards Co. v. Roberts, 154 N. Y. 1, 47 N. E. 974; People ex rel. Niagara River Hydraulic Co. v. Roberts, 30 App. Div. 180, 51 N. Y. Supp. 771, affirmed in 157 N. Y. 676, 51 N. E. 1093; People ex rel. Ft. George Realty Co. v. Miller, 179 N. Y. 49, 71 N. E. 463; People ex rel. Interborough Rapid Transit Co. v. Williams, 200 N. Y. 103, 93 N. E. 505; Com. v. Standard Oil Co. 101 Pa. 119; Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 28 L. ed. 1137, 5 Sup. Ct. Rep. 739; Re Alabama & C. R. Co. 9 Blatchf. 390, Fed. Cas. No. 124; Gilchrist v. Helena, H. S. & S. R. Co. 47 Fed. 593; Oakland Sugar Mill Co. v. Fred W. Wolf Co. 55 C. C. A. 93, 118 Fed. 239; New York & S. Constr. Co. v. Winton, 208 Pa. 471, 57 Atl. 955; Colonial Trust Co. v. Montello Brick Works, 97 C. C. A. 144, 172 Fed. 311; General Conference v. Berkey, 156 Cal. 466, 105 Pac. 411; Missouri Coal & Min. Co. v. Ladd, 160 Mo. 435, 61 S. W. 191.

Messrs. *William N. Dykman* and *Arthur E. Goddard* filed a brief for appellees in No. 409:

The tax in question does not involve an unconstitutional interference with the sovereign powers and functions of the states.

South Carolina v. United States, 199 U. S. 437, 454, 459, 50 L. ed. 261, 266, 268, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737; License Tax Cases, 5 Wall. 462, 475, 18 L. ed. 497, 502; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561; Plummer v. Coler, 178 U. S. 115, 137, 44 L. ed. 998, 1009, 20 Sup. Ct. Rep. 829; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803.

A distinction exists between the governmental and quasi private functions and instrumentalities of the state.

Re Rapid Transit Comrs. 197 N. Y. 81, — L.R.A.(N.S.) —, 90 N. E. 456, 18 A. & E. Ann. Cas. 366.

If, as is claimed, Congress cannot tax corporations chartered by the states, and if this is one of the subjects of taxation over which Congress has no power, such as exports, then it must follow (Fairbank v. United States, 181 U. S. 283, 45 L. ed. 862, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135) that the result cannot be accomplished in any manner, directly or indirect-

ly, and whether or not individuals as well as corporations are included in the tax. That this is not the case is shown by the following, among other cases:

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95.

In every case in which it has been held, directly or indirectly, that a state may not tax a corporate franchise granted by Congress, it will be fond that the real reason for this is not that the mere franchise, as such, is a part and parcel of the sovereign governmental instrumentalities of the Federal government, but that the functions, duties, and operations of such corporations fall within the protection of the powers delegated to Congress, and therefore are not subject to interference by the states.

M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073; Reagan v. Mercantile Trust Co. 154 U. S. 413, 38 L. ed. 1028, 4 Inters. Com. Rep. 575, 14 Sup. Ct. Rep. 1060.

A Federal tax upon the income of corporations is not a direct tax, because it is rather an excise upon the artificial rights of corporations who hold property and receive income therefrom, than a direct tax upon the property.

Knowlton v. Moore, 178 U. S. 41, 59, 44 L. ed. 969, 977, 20 Sup. Ct. Rep. 747; Plummer v. Coler, 178 U. S. 115, 137, 44 L. ed. 998, 1009, 20 Sup. Ct. Rep. 829; Nicol v. Ames, 173 U. S. 509, 521, 43 L. ed. 786, 793, 19 Sup. Ct. Rep. 522.

The tax is a tax upon the doing of business by corporations and joint stock companies. Their right of doing business, apart from their right to exist and hold property, considered above, is distinct from the natural right of individuals in general to engage in business, just as the right to buy and sell property at an exchange is distinct from the general natural right to buy and sell property anywhere. A tax on the former is an excise tax on a privilege, while a tax on the latter may be held to be a direct tax on property.

Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522.

The Federal government in the past has imposed taxes falling only upon corporations engaged in certain businesses, without the slightest suggestion or objection that the taxes were improper because not excise taxes on business.

Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597.

Measuring excise or privilege taxes by gross receipts or net income from all sources, whether or not directly derived from the privilege in question, is an extremely common method, and has frequently been upheld by this court.

Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; State R. Tax Cases, 92 U. S. 575, 23 L. ed. 663; Western U. Teleg. Co. v. Atty. Gen. 125 U. S. 530, 31 L. ed. 790, 8 Sup. Ct. Rep. 961; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Rep. 595, 11 Sup. Ct. Rep. 876; Postal Teleg. Cable Co. v. Adams, 155 U. S. 688, 39 L. ed. 311, 5 Inters. Com. Rep. 1, 15 Sup. Ct. Rep. 268, 360; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; McHenry v. Alford, 168 U. S. 651, 42 L. ed. 614, 18 Sup. Ct. Rep. 242.

The tax imposed by the act is "uniform."

Head Money Cases (Edye v. Robertson) 112 U. S. 580, 28 L. ed. 798, 5 Sup. Ct. Rep. 247; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; McCray v. United States, 195 U. S. 27, 50, 49 L. ed. 78, 93, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

A tax upon the franchises or business of state railroads or public-service corporations is not an interference with governmental functions or instrumentalities of the state, and is valid.

South Carolina v. United States, 199 U. S. 437, 50 L. ed.

261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737; Re Rapid Transit Comrs. 197 N. Y. 81, — L.R.A.(N.S.) —, 90 N. E. 456, 18 A. & E. Ann. Cas. 366; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647.

Messrs. *Charles A. Snow* and *Joseph H. Knight* filed a brief for appellees in No. 425:

The taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 446, 19 L. ed. 95, 99; McCray v. United States, 195 U. S. 27, 59, 49 L. ed. 78, 97, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

Under the rule of *stare decisis* the corporation tax must be held to be an "excise." Otherwise, numerous decisions holding identical or analogous taxes to be "excises" must be overruled.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Erie R. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223; Western Union R. Co. v. United States, 101 U. S. 543, 550, 25 L. ed. 1068, 1070; Bailey v. New York C. & H. R. R. Co. 106 U. S. 109, 115, 27 L. ed. 81, 83, 1 Sup. Ct. Rep. 62; Memphis & C. R. Co. v. United States, 108 U. S. 228, 234, 27 L. ed. 711, 713, 2 Sup. Ct. Rep. 482; Little Miami & C. & X. R. Co. v. United States, 108 U. S. 277, 279, 27 L. ed. 724, 725, 2 Sup. Ct. Rep. 627; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 638, 18 L. ed. 904, 906; Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Portland Bank v. Apthorp, 12 Mass. 256; Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Rep. 595, 11 Sup. Ct. Rep. 876; State Tax on R. Gross Receipts, 15 Wall. 284, 293, 21 L. ed. 164, 167; Springer v. United States, 102 U. S. 586, 26 L. ed. 253; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 413, 48 L. ed. 496, 501, 24 Sup. Ct. Rep. 376; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep.

829; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522; Treat v. White, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Rep. 611; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561; New York v. Roberts, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Rep. 58; Snyder v. Bettman, 190 U. S. 249, 253, 47 L. ed. 1035, 1037, 23 Sup. Ct. Rep. 803.

Being "excises," their validity is not questionable by reason of the fact that United States tax-exempt securities, or state or municipal bonds, or other instrumentalities of state governments, are included within the estate or capital thus subjected to an excise tax.

Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; Mager v. Grima, 8 How. 490, 12 L. ed. 1168; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803; United States v. Perkins, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594; New York v. Roberts, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Rep. 58; Orr v. Gilman, 183 U. S. 278, 46 L. ed. 196, 22 Sup. Ct. Rep. 213; Billings v. Illinois, 188 U. S. 97, 47 L. ed. 400, 23 Sup. Ct. Rep. 272; Blackstone v. Miller, 188 U. S. 189, 47 L. ed. 439, 23 Sup. Ct. Rep. 277; Campbell v. California, 200 U. S. 87, 50 L. ed. 382, 26 Sup. Ct. Rep. 182; Cahen v. Brewster, 203 U. S. 543, 51 L. ed. 310, 27 Sup. Ct. Rep. 174, 8 A. & E. Ann. Cas. 215; Chanler v. Kelsey, 205 U. S. 466, 51 L. ed. 882, 27 Sup. Ct. Rep. 550; Buck v. Beach, 206 U. S. 392, 408, 51 L. ed. 1106, 1114, 27 Sup. Ct. Rep. 712, 11 A. & E. Ann. Cas. 732.

As an excise tax, the corporation tax is uniform and otherwise fully complies with all constitutional requirements.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Patton v. Brady, 184 U. S. 608, 622, 623, 46 L. ed. 713, 720, 721, 22 Sup. Ct. Rep. 493.

Corporate franchises are properly subject to Federal excise

taxes, notwithstanding the fact that the corporation may not be engaged in interstate commerce, and so is not subject in any way to Federal regulation or control.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Snyder v. Bettman, 190 U. S. 249, 252, 47 L. ed. 1035, 1036, 23 Sup. Ct. Rep. 803; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99.

The classification of corporations and noncorporations presents such obvious distinctions that it is unnecessary to argue that there is a reasonable basis for such classification.

McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561; Board of Education v. Illinois, 203 U. S. 553, 51 L. ed. 314, 27 Sup. Ct. Rep. 171, 8 A. & E. Ann. Cas. 157.

The decisions of this court give no countenance to the theory that the selection by Congress of one class as a proper subject for excise taxation, rather than another class, presents any reason for judicial interference, upon the ground that any provision of the Constitution has been contravened.

Spencer v. Merchant, 125 U. S. 345, 355, 31 L. ed. 763, 767, 8 Sup. Ct. Rep. 921; McCray v. United States, 195 U. S. 27, 61, 49 L. ed. 78, 97, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561; Treat v. White, 181 U. S. 264, 269, 45 L. ed. 853, 855, 21 Sup. Ct. Rep. 611; Patton v. Brady, 184 U. S. 608, 623, 46 L. ed. 713, 720, 22 Sup. Ct. Rep. 493.

An excise tax cannot be attacked upon the ground that it directly taxes or interferes with the instrumentalities of the state or Federal governments, for it is not a tax on property, and the kind of property taxed indirectly is a matter of no consequence.

Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

The Senate has the power to amend a revenue bill. This power to amend is not confined to the elimination of provisions contained in the original act, but embraces as well the addition

of such provisions thereto as may render the original act satisfactory to the body which is called upon to support it. It has, in fact, been held that the substitution of an entirely new measure for the one originally proposed can be supported as a valid amendment.

Brake v. Collison, 122 Fed. 722.

Mr. *James L. Quackenbush* filed a statement for appellees in No. 442.

Solicitor General *Lehmann* (by special leave) argued the cause for the United States on reargument.

Mr. Justice Day delivered the opinion of the court:

These cases involve the constitutional validity of § 38 of the act of Congress approved August 5, 1909, known as "the corporation tax" law. 36 Stat. at L. 11, 112–117, chap. 6, U. S. Comp. Stat. Supp. 1909, pp. 659, 844–849.

It is contended in the first place that this section of the act is unconstitutional, because it is a revenue measure, and originated in the Senate in violation of § 7 of article 1 of the Constitution, providing that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with the amendments, as on other bills." The history of the act is contained in the government's brief, and is accepted as correct, no objection being made to its accuracy.

This statement shows that the tariff bill of which the section under consideration is a part, originated in the House of Representatives, and was there a general bill for the collection of revenue. As originally introduced, it contained a plan of inheritance taxation. In the Senate the proposed tax was removed from the bill, and the corporation tax, in a measure, substituted therefor. The bill having properly originated in the House, we perceive no reason in the constitutional provision relied upon why it may not be amended in the Senate in the manner which it was in this case. The amendment was germane to the subject-matter of the bill, and not beyond the power of the Senate to propose. In thus deciding we do not wish to be regarded as holding that the journals of the House and Senate may be examined to invalidate an act which has been passed and signed by the presiding officers of the House and Senate, and

approved by the President, and duly deposited with the State Department. Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. ed. 294, 12 Sup. Ct. Rep. 495; Harwood v. Wentworth, 162 U. S. 547, 40 L. ed. 1069, 16 Sup. Ct. Rep. 890; Twin City Bank v. Nebeker, 167 U. S. 196, 42 L. ed. 134, 17 Sup. Ct. Rep. 766.

In order to have in mind some of the more salient features of the statute, with a view to its interpretation, a part of the first paragraph is here set out, as follows:

"Sec. 38. That every corporation, joint stock company, or association organized for profit and having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country, and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association; or insurance company equivalent to one per centum upon the entire net income over and above five thousand dollars, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed; or, if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia, during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed."

A reading of this portion of the statute shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat

from corporations, have many of their attributes and enjoy many of their privileges. To these are added insurance companies, and they, as corporations, joint stock companies, or associations, must be such as are now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of Congress applicable to Alaska and the District of Columbia. Each and all of these, the statute declares, shall be subject to pay annually a special excise tax with respect to the carrying on and doing business by such corporation, joint stock company or association, or insurance company. The tax is to be equivalent to 1 per cent of the entire net income over and above $5,000 received by such corporation or company *from all sources* during the year, excluding, however, amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by the statute. Similar companies organized under the laws of any foreign country, and engaged in business in any state or territory of the United States, or in Alaska or the District of Columbia, are required to pay the tax upon the net income over and above $5,000 received by them from business transacted and capital invested within the United States, the territories, Alaska, and the District of Columbia, during each year, with the like exclusion as to amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed.

While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 1 per

centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business, with the advantages which inhere in the peculiarities of corporate or joint stock organization of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of the insurance companies, the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any state or territory, as heretofore stated.

This tax, it is expressly stated, is to be equivalent to 1 per centum of the entire net income over and above $5,000 received from *all sources* during the year,—this is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries, the amount of net income over and above $5,000 includes that received from business transacted and capital invested in the United States, the territories, Alaska, and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the act. Under the second paragraph the net income is to be ascertained by certain deductions from the gross amount of income received within the year "from all sources;" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income, with certain allowances and deductions

which do not suggest a restriction to income derived from property actively engaged in the business. This interpretation of the act, as resting upon the doing of business, is sustained by the reasoning in Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376, in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business.

Having thus interpreted the statute in conformity, as we believe, with the intention of Congress in passing it, we proceed to consider whether, as thus construed, the statute is constitutional.

It is contended that it is not; certainly so far as the tax is measured by the income of bonds nontaxable under Federal statutes, and of municipal and state bonds beyond the Federal power of taxation. And so of real and personal estates, because as to such estates the tax is direct, and required to be apportioned according to population among the states. It is insisted that such must be the holding unless this court is prepared to reverse the income tax cases decided under the act of 1894. [28 Stat. at L. 509, chap. 349.] Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, s. c. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912.

The applicable provisions of the Constitution of the United States in this connection are found in articles 1, § 8, clause 1, and in article 1, § 2, clause 3, and article 1, § 9, clause 4. They are respectively:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

"Representatives and direct taxes shall be apportioned among the several states which may be included within the Union, according to their respective numbers."

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

It was under the latter requirement as to apportionment of direct taxes according to population that this court in the Pol-

lock Case held the statute of 1894 to be unconstitutional. Upon the rehearing of the case Mr. Chief Justice Fuller, who spoke for the court, summarizing the effect of the decision, said:

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such." 158 U. S. 635.

And as to excise taxes, the chief justice said:

"We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations." (P. 637.)

The Pollock Case was before this court in Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747. In that case this court sustained an excise tax upon the transmission of property by inheritance. It was contended there, as here, that the case was ruled by the Pollock case, and of that case this court, speaking by the present chief justice, said:

"The issue presented in the Pollock Case was whether an income tax was direct within the meaning of the Constitution. The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed that the previous adjudications of this court had settled nothing to the contrary.

* * * * * * * *

"Undoubtedly, in the course of the opinion in the Pollock Case, it was said that if a tax was direct within the constitutional sense, the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement

as to apportionment. But this language related to the subject-matter under consideration, and was but a statement that a tax which was in itself direct, *because imposed upon property solely by reason of its ownership,* could not be changed by affixing to it the qualification of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered as the antithesis of such a tax; that is, that it has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

* * * * * * * *

"Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons *solely because of their general ownership of property* from being levied by any other rule than that of apportionment, two things were decided by the court: First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property, and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived. and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts, and excises, which are not the essential equivalent of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall."

The same view was taken of the Pollock Case in the subsequent case of Spreckels Sugar Ref. Co. v. McClain, supra.

The act now under consideration does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under article 1, § 8, clause 1 of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject-matter of the tax

imposed in the act under consideration. The Pollock Case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case the tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way.

It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion,—the terms duties, imposts, and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution. As Mr. Chief Justice Fuller said in the Pollock Case, supra:

"Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue." [157 U. S. 557.]

And in the same connection the chief justice, delivering the opinion of the court in Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305, in speaking of the words "duties," "imposts," and "excises," said:

"We think that they were used comprehensively, to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges." Cooley, Const. Lim. 7th ed. 680.

The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, *i. e.,* with the advan-

tages which arise from corporate or quasi corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the Thomas Case, 192 U. S. supra, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable.

If we are correct in holding that this is an excise tax, there is nothing in the Constitution requiring such taxes to be apportioned according to population. Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Springer v. United States, 102 U. S. 586, 26 L. ed. 253; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

It is next contended that the attempted taxation is void because it levies a tax upon the exclusive right of a state to grant corporate franchises, because it taxes franchises which are the creation of the state in its sovereign right and authority. This proposition is rested upon the implied limitation upon the powers of national and state governments to take action which encroaches upon or cripples the exercise of the exclusive power of sovereignty in the other. It has been held in a number of cases that the state cannot tax franchises created by the United States or the agencies or corporations which are created for the purpose of carrying out governmental functions of the United States. M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Union P. R. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; California v. Central P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

An examination of these cases will show that in each case where the tax was held invalid, the decision rested upon the proposition that the corporation was created to carry into effect powers conferred upon the Federal government in its sovereign capacity, and the attempted taxation was an interference with the effectual exercise of such powers.

In Osborn v. Bank of United States, supra, a leading case upon the subject, whilst it was held that the bank of the United States was not a private corporation, but a public one, created for national purposes, and therefore beyond the taxing power of the state, Chief Justice Marshall, in delivering the opinion of

the court, conceded that if the corporation had been originated for the management of an individual concern, with private trade and profit for its great end and principal object, it might be taxed by the state. Said the chief justice:

"If these premises [that the corporation was one of private character] were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the state, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner."

The inquiry in this connection is: How far do the implied limitations upon the taxing power of the United States over objects which would otherwise be legitimate subjects of Federal taxation, withdraw them from the reach of the Federal government in raising revenue, because they are pursued under franchises which are the creation of the states?

In approaching this subject we must remember that enactments levying taxes, as other laws of the Federal government when acting within constitutional authority, are the supreme law of the land. The Constitution contains only two limitations on the right of Congress to levy excise taxes: they must be levied for the public welfare, and are required to be uniform throughout the United States. As Mr. Chief Justice Chase said, speaking for the court in License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500: "Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion." The limitations to which the chief justice refers were the only ones imposed in the Constitution upon the taxing power.

In McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561, this court sustained a Federal tax on oleomargarin, artificially colored, and held that while the 5th and 10th Amendments qualify, so far as applicable, all the provisions of the Constitution, nothing in

those amendments operates to take away the power to tax conferred by the Constitution on the Congress. In that case it was contended that the subject taxed was within the exclusive domain of the states, and that the real purpose of Congress was not to raise revenue, but to tax out of existence a substance not harmful of itself and one which might be lawfully manufactured and sold; but the only constitutional limitation which this court conceded, in addition to the requirement of uniformity, and that for the sake of argument only so far as concerned the case then under consideration, was that Congress is restrained from arbitrary impositions or from exceeding its powers in seeking to effect unwarranted ends. The limitation of uniformity was deemed sufficient by those who framed and adopted the Constitution. The courts may not add others. Patton v. Brady, 184 U. S. 608, 622, 46 L. ed. 713, 720, 22 Sup. Ct. Rep. 493. And see United States v. Singer, 15 Wall. 111, 121, 21 L. ed. 49, 51; Nicol v. Ames, 173 U. S. 509, 515, 43 L. ed. 786, 791, 19 Sup. Ct. Rep. 522.

We must therefore enter upon the inquiry as to implied limitations upon the exercise of the Federal authority to tax because of the sovereignty of the states over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the states in order to support their local government.

While the tax in this case, as we have construed the statute, is imposed upon the exercise of the privilege of doing business in a corporate capacity, as such business is done under authority of state franchises, it becomes necessary to consider in this connection the right of the Federal government to tax the activities of private corporations which arise from the exercise of franchises granted by the state in creating and conferring powers upon such corporations. We think it is the result of the cases heretofore decided in this court, that such business activities, though exercised because of state created franchises, are not beyond the taxing power of the United States. Taxes upon rights exercised under grants of state franchises were sustained

by this court in Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Erie R. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

It is true that in those cases the question does not seem to have been directly made, but, in sustaining such taxation, the right of the Federal government to reach such agencies was necessarily involved. The question was raised and decided in the case of Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482. In that well-known case a tax upon the notes of a state bank issued for circulation was sustained. Mr. Chief Justice Chase, in the course of the opinion, said:

"Is it, then, a tax on a franchise granted by a state, which Congress, upon any principle exempting the reserved powers of the states from impairment by taxation, must be held to have no authority to lay and collect?

"We do not say that there may not be such a tax. It may be admitted that the reserved rights of the states, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of state government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a state are necessarily exempt from taxation; for franchises are property, often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a state, seem to be as properly objects of taxation as any other property.

"But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued under the franchise, or power to issue bank bills. A railroad company, in the exercise of its corporate franchises, issues freight receipts, bills of lading, and passenger tickets; and it cannot be doubted that the organization of railroads is quite as important to the state as the organization of banks. But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress, and not exempted by any relation to the state which granted the charter of the railroad. And it seems difficult to distinguish the tax-

ation of notes issued for circulation from the taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both, as we think, may properly be made contributory to the public revenue." (pp. 547, 548).

It is true that the decision in the Veazie Bank Case was also placed, in a measure, upon the authority of the United States to control the circulating medium of the country, but the force of the reasoning which we have quoted has not been denied or departed from.

In Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305, a Federal tax on the transfer of corporate shares in state corporations was upheld as a tax upon business transacted in the exercise of privileges afforded by the state laws in respect to corporations.

In Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522, a Federal tax was sustained upon the enjoyment of privileges afforded by a board of trade incorporated by the state of Illinois.

When the Constitution was framed, the right to lay excise taxes was broadly conferred upon the Congress. At that time very few corporations existed. If the mere fact of state incorporation, extending now to nearly all branches of trade and industry, could withdraw the legitimate objects of Federal taxation from the exercise of the power conferred, the result would be to exclude the national government from many objects upon which indirect taxes could be constitutionally imposed. Let it be supposed that a group of individuals, as partners, were carrying on a business upon which Congress concluded to lay an excise tax. If it be true that the forming of a state corporation would defeat this purpose, by taking the necessary steps required by the state law to create a corporation and carrying on the business under rights granted by a state statute, the Federal tax would become invalid and that source of national revenue be destroyed, except as to the business in the hands of individuals or partnerships. It cannot be supposed that it was intended that it should be within the power of individuals acting under state authority to thus impair and limit the exertion of authority which may be essential to national existence.

In this connection South Carolina v. United States, 199 U.

S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737, is important. In that case it was held that the agents of the state government, carrying on the business of selling liquor under state authority, were liable to pay the internal revenue tax imposed by the Federal government. In the opinion previous cases in this court were reviewed, and the rule to be deduced therefrom stated to be that the exemption of state agencies and instrumentalities from national taxation was limited to those of a strictly governmental character, and did not extend to those used by the state in carrying on business of a private character. 199 U. S. 461.

The cases unite in exempting from Federal taxation the means and instrumentalities employed in carrying on the governmental operations of the state. The exercise of such rights as the establishment of a judiciary, the employment of officers to administer and execute the laws, and similar governmental functions, cannot be taxed by the Federal government. The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597; Ambrisini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699.

But this limitation has never been extended to the exclusion of the activities of a merely private business from the Federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the states. We therefore reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a state in the creation of private corporations does not exempt it from the exercise of Federal authority to levy excise taxes upon such privileges.

But, it is insisted, this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a corporation, and exempts a similar business when carried on by a partnership or private individual, as to place it beyond the authority conferred upon Congress. As we have seen, the only limitation upon the authority conferred is uniformity in laying the tax, and uniformity does not require the equal application of the tax to all persons or corporations who may come within its operation, but is limited to geographical uniformity throughout the United States. This subject was fully dis-

cussed and set at rest in Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747, and we can add nothing to the discussion contained in that case.

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation see cases in the margin decided in this court, upholding the power.†

Many instances might be given where this court has sus-

†Hylton v. United States, 3 Dall. 171, 1 L. ed. 556 (a tax on carriages which the owner kept for private use); Nicol v. Ames, supra (a tax upon sales or exchanges of boards of trade); Knowlton v. Moore, supra (a tax on the transmission of property from the dead to the living); Treat v. White, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Rep. 611 (a tax on agreements to sell shares of stock, denominated "calls" by stockbrokers): Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493 (a tax on tobacco manufactured for consumption, and imposed at a period intermediate the commencement of manufacture and the final consumption of the article); Cornell v. Coyne, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Rep. 383 (a tax on "filled cheese" manufactured expressly for export); McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561 (a tax on oleomargarin not artificially colored, a higher tax on oleomargarin artificially colored, and no tax on butter artificially colored); Thomas v. United States, supra (a tax on sales of shares of stock in corporations); Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95 (a tax upon the amounts insured, renewed, or continued by insurance companies, upon the gross amounts of premiums received and assessments made by them, and also upon dividends, undistributed sums, and incomes); Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 (a tax of 10 per centum on the amount of the notes paid out of any state bank, or state banking association); Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99 (a tax on devolutions of title to real estate); Spreckels v. Sugar Ref. Co. 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376 (a tax on the gross receipts of corporations and companies, in excess of $250,000, engaged in refining sugar or oil); Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647 (a tax laid in terms upon the amounts paid by certain public-service corporations as interest on their funded debt, or as dividends to their stockholders, and also on "all profits, incomes, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction." Held to be a tax upon the company's earnings, and therefore essentially an excise upon the business of the corporations); Springer v. United States, 102 U. S. 586, 26 L. ed. 253 (a duty provided by the internal revenue acts to be assessed, collected, and paid upon gains, profits, and incomes, held to be an excise or duty, and not a direct tax).

tained the right of a state to select subjects of taxation, although as to them the 14th Amendment imposes a limitation upon state legislatures, requiring that no person shall be denied the equal protection of the laws. See some of them noted in the margin.‡

In Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533, dealing with the 14th Amendment, which in this respect imposes limitations only on state authority, this court said:

"The provision in the 14th Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are

‡Beers v. Glynn, 211 U. S. 477, 53 L. ed. 290, 29 Sup. Ct. Rep. 186 (a state tax on personalty of nonresident decedents who owned realty in the state); New York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736 (a state tax on the transfers of stock made within the state); Armour Packing Co. v. Lacy, 200 U. S. 226, 50 L. ed. 451, 26 Sup. Ct. Rep. 232 (a state license tax on meat-packing houses. A foreign corporation selling its products in the state, but whose packing establishments are not situated in the state, is not exempt from such license tax); Savannah, T. & I. of H. R. Co. v. Savannah, 198 U. S. 392, 49 L. ed. 1097, 25 Sup. Ct. Rep. 690 (a classification which distinguishes between an ordinary street railway and a steam railroad, making an extra charge for local deliveries of freight brought over its road from outside the city, held not to be such a classification as to make the tax void under the 14th Amendment); Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233 (a state tax on cigarette dealers); Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594 (upholding the graded inheritance tax law of Illinois); Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533 (state tax upon the nominal face value of bonds, instead of their actual value, held a valid part of the state system of taxation).

within the discretion of the state legislature, or the people of the state in framing their Constitution."

It is insisted in some of the briefs assailing the validity of this tax that these cases have been modified by Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247. In that case a corporation organized in a state other than Alabama came into that state in compliance with its laws, paid the license tax and property tax imposed upon other corporations doing business in the state, and acquired, under direct sanction of the laws of the state, a large amount of property therein, and when it was attempted to subject it to a further tax, on the ground that it was for the privilege of doing business as a foreign corporation, when the same tax was not imposed upon state corporations doing precisely the same business, in the same way, it was held that the attempted taxation was merely arbitrary classification, and void under the 14th Amendment. In that case the foreign corporation was doing business under the sanction of the state laws no less than the local corporation; it had acquired its property under sanction of those laws; it had paid all direct and indirect taxes levied against it, and there was no practical distinction between it and a state corporation doing the same business in the same way.

In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the

advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals.

It is further contended that some of the corporations, notably insurance companies, have large investments in municipal bonds and other nontaxable securities, and in real estate and personal property not used in the business; that therefore the selection of the measure of the income from all sources is void, because it reaches property which is not the subject of taxation,—upon the authority of the Pollock Case, supra. But this argument confuses the measure of the tax upon the privilege with direct taxation of the state or thing taxed. In the Pollock Case, as we have seen, the tax was held unconstitutional because it was in effect a direct tax on the property solely because of its ownership.

Nor does the adoption of this measure of the amount of the tax do violence to the rule laid down in Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638, nor the Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190. In the Galveston Case it was held that a tax imposed by the state of Texas, equal to 1 per cent upon the gross receipts "from every source whatever" of lines of railroad lying wholly within the state, was invalid as an attempt to tax gross receipts derived from the carriage of passengers and freight in interstate commerce, which in some instances was much the larger part of the gross receipts taxed. This court held that this act was an attempt to burden commerce among the states, and the fact that it was declared to be "equal to" 1 per cent made no difference, as it was merely an effort to reach gross receipts by a tax not even disguised as an occupation tax, and in nowise helped by the words "equal to." In other words, the tax was held void, as its substance and manifest intent was to tax interstate commerce as such.

In the Western Union Telegraph Cases the state undertook to levy a graded charter fee upon the entire capital stock of one

hundred millions of dollars of the Western Union Telegraph Company, a foreign corporation, and engaged in commerce among the states, as a condition of doing local business within the state of Kansas. This court held, looking through forms and reaching the substance of the thing, that the tax thus imposed was in reality a tax upon the right to do interstate commerce within the state, and an undertaking to tax property beyond the limits of the state; that whatever the declared purpose, when reasonably interpreted, the necessary operation and effect of the act in question was to burden interstate commerce and to tax property beyond the jurisdiction of the state, and it was therefore invalid.

There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which hold that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the state or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property.

In Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593, a tax was sustained upon the right or privilege of the Home Insurance Company to be a corporation, and to do business within the state in a corporate capacity, the tax being measured by the extent of the dividends of the corporation in the current year upon the capital stock. Although a very large amount, nearly two of three millions of capital stock, was invested in bonds of the United States, expressly exempted from taxation by a statute of the United States, the tax was sustained as a mode of measurement of a privilege tax which it was within the lawful authority of the state to impose. Mr. Justice Field, who delivered the opinion of the court, reviewed the previous cases in this court, holding that the state could not tax or burden the operation of the Constitution and of laws enacted by the Congress to carry into execution the powers vested in the general government. Yielding full assent to those cases, Mr. Justice Field said of the tax then under consideration: "It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United

States composing a part of that stock. The statute designates it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year." In that case, in the course of the opinion, previous cases of this court were cited, with approval. Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907.

In the Coite Case a privilege tax upon the total amount of deposits in a savings bank was sustained, although $500,000 of the deposits had been invested in securities of the United States, and declared by act of Congress to be exempt from taxation by state authority. In that case the court said: "Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a state for the support of the state government. Authority to that effect resides in the state independent of the Federal goverment, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in Federal securities." In Provident Inst. v. Massachusetts, supra, a like tax was sustained.

It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. See, in this connection, Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163, as interpreted in Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 226, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.

It is contended that measurement of the tax by the net income of the corporation or company received by it from all sources is not only unequal, but so arbitrary and baseless as to

fall outside of the authority of the taxing power. But is this so? Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the measure of income from all sources does. Nor can it be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods; it may give a standing which shall facilitate purchases; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige.

It is true that in the Spreckels Case, 192 U. S. supra, the excise tax, for the privilege of doing business, was based upon the business assets in use by the company, but this was because of the express terms of the statute which thus limited the measure of the excise. The statute now under consideration bears internal evidence that its draftsman had in mind language used in the opinion in the Spreckels Case, and the measure of taxation, the income from all sources, was doubtless inserted to prevent the limitation of the measurement of the tax to the income from business assets alone. There is no rule which permits a court to say that the measure of a tax for the privilege of doing business, where income from property is the basis, must be limited to that derived from property which may be strictly said to be actively used in the business. Departures from that rule, sustained in this court, are not wanting. In United States v. Singer, 15 Wall. 111, 21 L. ed. 49, an excise tax was sustained upon the liquor business, which was fixed by the payment of an amount not less than 80 per cent of the total capacity of the distillery. Whether such capacity was used in the business was a matter of indifference, and this court said of such a measure:

"Everyone is advised in advance of the amount he will be

required to pay if he enters into the business of distilling spirits, and every distiller must know the producing capacity of his distillery. If he fail under these circumstances to produce the amount for which, by the law, he will in any event be taxed if he undertakes to distill at all, he is not entitled to much consideration."

In Society for Savings v. Coite, 6 Wall. supra, and Provident Inst. v. Massachusetts, 6 Wall, supra, as we have seen, the amount of excise was measured by the amount of bank deposits. It made no difference that the deposits were not used actively in the business.

In Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904, the tax was measured by the excess of the market value of the corporation's capital stock above the value of its real estate and machinery, and in this connection see Home Ins. Co. v. New York, 134 U. S. supra, where the excise was computed upon the entire capital stock, measured by the extent of the dividends thereon.

We must not forget that the right to select the measure and objects of taxation devolves upon the Congress, and not upon the courts, and such selections are valid unless constitutional limitations are overstepped. "It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount or the property upon which it is imposed." Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; McCray v. United States, 195 U. S. 27, 58, 49 L. ed. 78, 96, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561, and previous cases in this court there cited.

Nor is that line of cases applicable, such as Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678, holding that a tax on the sales of an importer is a tax on the import, and Cook v. Pennsylvania, 97 U. S. 566, 24 L. ed. 1015, holding a tax on auctioneers' sales of goods in original packages a tax on imports. In these cases the tax was held invalid, as the state thereby taxed subjects of taxation within the exclusive power of Congress.

What we have said as to the power of Congress to lay this excise tax disposes of the contention that the act is void, as lacking in due process of law.

It is urged that this power can be so exercised by Congress

as to practically destroy the right of the states to create corporations, and for that reason it ought not to be sustained, and reference is made to the declaration of Chief Justice Marshall in M'Culloch v. Maryland, that the power to tax involves the power to destroy. This argument has not been infrequently addressed to this court with respect to the exercise of the powers of Congress. Of such contention this court said in Knowlton v. Moore, 178 U. S. 60, 44 L. ed. 977, 20 Sup. Ct. Rep. 755:

"This principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy, which may be the consequence of taxation, is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had, there would be an end of all taxation; that is to say, if a lawful tax can be defeated because the power which is manifested by its imposition may, when further exercised, be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied."

In Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482, supra, speaking for the court, the chief justice said:

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is therefore beyond the constitutional power of Congress.

"The first answer to this is that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So, if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution."

So the same effect; McCray v. United States, 195 U. S. 27,

49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561. In the latter case it was said:

"No instance is afforded from the foundation of the government where an act which was within a power conferred was declared to be repugnant to the Constitution because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust."

And in the same case this court said, after reviewing the previous cases in this court:

"Since, as pointed out in all the decisions referred to, the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow, if a tax be within the lawful power, the exertion of that power may not be judicially restrained because of the results to arise from its exercise."

The argument, at last, comes to this: That because of possible results, a power lawfully exercised may work disastrously, therefore the courts must interfere to prevent its exercise, because of the consequences feared. No such authority has ever been invested in any court. The remedy for such wrongs, if such in fact exist, is in the ability of the people to choose their own representatives, and not in the exertion of unwarranted powers by courts of justice.

It is especially objected that certain of the corporations whose stockholders challenge the validity of the tax are so-called real estate companies, whose business is principally the holding and management of real estate. These cases are No. 415, Cedar Street Company v. Park Realty Company; No. 431, Percy H. Brundage v. Broadway Realty Company; No. 443, Phillips v. Fifty Associates et al.; No. 446, Mitchell v. Clark Iron Company; No. 412, William H. Miner v. Corn Exchange Bank et al.; and No. 457, Cook et al. v. Boston Wharf Company.

In No. 412, Miner v. Corn Exchange Bank et al., the bank occupies a building in part and rents a large part to tenants.

Of the realty companies, the Park Realty Company was organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, apartment houses, etc.; to make and carry out contracts in the manner specified concerning

buildings . . . and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc.

At the time the bill was filed the business of the company related to the Hotel Leonori, and the bill averred that it was engaged in no other business except the management and leasing of that hotel.

The Broadway Realty Company was formed for the purpose of owning, holding, and managing real estate. It owns an office building and certain securities. The office building is let to tenants, to whom light and heat are furnished, and for whom janitor and similar service are performed.

The Fifty Associates are operating under a charter to own real estate, with power to build, improve, alter, pull down, and rebuild, and to manage, exchange and dispose of the same.

The Clark Iron Company was organized under the laws of Minnesota, owns and leases ore lands for the purpose of carrying on mining operations, and receives a royalty depending upon the quantity of ore mined.

The Boston Wharf Company is operating under a charter authorizing it to acquire lands and flats, with their privileges and appurtenances, and to lease, manage, and improve its property in whatever manner shall be deemed expedient by it, and to receive dockage and wharfage for vessels laid at its wharfs.

What we have said as to the character of the corporation tax as an excise disposes of the contention that it is direct, and therefore requiring apportionment by the Constitution. It remains to consider whether these corporations are engaged in business. "Business" is a very comprehensive term and embraces everything about which a person can be employed. Black's Law Dict. 158, citing People ex rel. Hoyt v. Tax Comrs. 23 N. Y. 242, 244. "That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit." 1 Bouvier's Law Dict. p. 273.

We think it is clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the

meaning of this statute, and in the capacity necessary to make such organizations subject to the law.

Of the Motor Taximeter Cab Company Case, No. 432, the company owns and leases taxicabs, and collects rents therefrom. We think it is also doing business within the meaning of the statute.

What we have already said disposes of the objections made in certain cases of life insurance and trust companies, and banks, as to income derived from United States, state, municipal, or other nontaxable bonds.

We come to the question, Is a so-called public-service corporation, such as the Coney Island and Brooklyn Railroad Company, in case No. 409, and the Interborough Rapid Transit Company, No. 442, exempted from the operation of this statute? In the case of South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737, this court held that when a state, acting within its lawful authority, undertook to carry on the liquor business, it did not withdraw the agencies of the state, carrying on the traffic, from the operation of the internal revenue laws of the United States. If a state may not thus withdraw from the operation of a Federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the Federal right to reach such properties and activities for the purposes of revenue.

It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself,

and those activities which are of a private character. The former, the United States may not interfere with by taxing the agencies of the state in carrying out its purposes; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate Federal taxation.

Applying this principle, we are of opinion that the so-called public-service corporations represented in the cases at bar are not exempt from the tax in question. Union P. R. Co. v. Peniston, 18 Wall. 5, 33, 21 L. ed. 787, 792.

It is again objected that incomes under $5,000 are exempted from the tax. It is only necessary, in this connection, to refer to Knowlton v. Moore, 178 U. S. supra, in which a tax upon inheritances in excess of $10,000 was sustained. In Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594, a graded inheritance tax was sustained.

As to the objections that certain organizations,—labor, agricultural, and horticultural,—fraternal and benevolent societies, loan and building associations, and those for religious, charitable, or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed must be included the right to make exemptions such as are found in this act.

Again, it is urged that Congress exceeded its power in permitting a deduction to be made of interest payments only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of the corporation or company. This provision may have been inserted with a view to prevent corporations from issuing a large amount of bonds in excess of the paid-up capital stock, and thereby, distributing profits so as to avoid the tax. In any event, we see no reason why this method of ascertaining the deductions allowed should invalidate the act. Such details are not wholly

arbitrary, and were deemed essential to practical operation. Courts cannot substitute their judgment for that of the legislature. In such matters a wide range of discretion is allowed.

The argument that different corporations are so differently circumstanced in different states, and the operation of the law so unequal as to destroy it, is so fully met in the opinion in Knowlton v. Moore, 178 U. S. supra, that it is only necessary to make reference thereto. For this purpose the law operates uniformly, geographically considered, throughout the United States, and in the same way wherever the subject-matter is found. A liquor tax is not rendered unlawful as a revenue measure because it may yield nothing in those states which have prohibited the liquor traffic. No more is the present law unconstitutional because of inequality of operation owing to different local conditions.

Nor is the special objection tenable, made in some of the cases, that the corporations act as trustees, guardians, etc., under the authority of the laws or courts of the state. Such trustees are not the agents of the state government in a sense which exempts them from taxation because executing the necessary governmental powers of the state. The trustees receive their compensation from the interests served, and not from the public revenues of the state.

It is urged in a number of the cases that in a certain feature of the statute there is a violation of the 4th Amendment of the Constitution, protesting against unreasonable searches and seizures. This amendment was adopted to protect against abuses in judicial procedure under the guise of law, which invade the privacy of persons in their homes, papers, and effects, and applies to criminal prosecutions and suits for penalties and forfeitures under the revenue laws. Boyd v. United States, 116 U. S. 632, 29 L. ed. 751, 6 Sup. Ct. Rep. 524. It does not prevent the issue of search warrants for the seizure of gambling paraphernalia and other illegal matter. Adams v. New York, 192 U. S. 585, 48 L. ed. 575, 24 Sup. Ct. Rep. 372. It does not prevent the issuing of process to require attendance and testimony of witnesses, the production of books and papers, etc. Interstate Commerce Commission v. Brimson, 154 U. S. 447, 38 L. ed. 1047, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125; Interstate Commerce Commission v. Baird, 194 U. S.

25, 48 L. ed. 860, 24 Sup. Ct. Rep. 563. Certainly the amendment was not intended to prevent the ordinary procedure in use in many, perhaps most, of the states, of requiring tax returns to be made, often under oath. The objection in this connection applies, when the substance of the argument is reached, to the 6th subsection of § 38 of the act, which provides:

"Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commission of Internal Revenue, and shall constitute public records, and be open to inspection as such." [36 Stat. at L. 116, chap. 6, U. S. Comp. Stat. Supp. 1909, p. 849.]

An amendment was made June 17, 1910, which reads as follows:

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations, required by section thirty-eight of an act entitled, 'An act to Provide Revenue, Equalize Duties, Encourage the Industries of the United States, and for Other Purposes,' approved August fifth, nineteen hundred and nine, including the employment in the District of Columbia of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars: Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President." [36 Stat. at L. 494, chap. 297.]

The contention is that the above section as originally framed and as now amended could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration. But we cannot agree to this contention. The taxation being, as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purpose of making the law effectual. In this connection the often-quoted declaration of Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 421, 4 L. ed.

579, 605, is appropriate: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fullness and accuracy thereof. In many of the states laws are to be found making tax returns public documents, and open to inspection.†

We cannot say that this feature of the law does violence to the constitutional protection of the 4th Amendment, and, this is equally true of the 5th Amendment, protecting persons against compulsory self-incriminating testimony. No question under the latter Amendment properly arises in these cases, and when circumstances are presented which invoke the protection of that Amendment, and raise questions involving rights thereby secured, it will be time enough to decide them. And so of the argument that the penalties for the nonpayment of the taxes are so high as to violate the Constitution. No case is presented involving that question, and, moreover, the penalties are clearly a separate part of the act, and whether collectible or not may be determined in a case involving an attempt to enforce them. Willcox v. Consolidated Gas Co. 212 U. S. 19, 53, 53 L. ed. 382, 400, 29 Sup. Ct. Rep. 192, 15 A. & E. Ann. Cas. 1034.

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†In Connecticut, the requirement is that the tax lists of the assessors shall be abstracted and lodged in the town clerk's office "for public inspection." Rev. Stat. (Conn.) § 2310. In New York, notices of the completion of the assessment rolls must be conspicuously posted in three or more public places, and a copy left in a specified place, "where it may be seen and examined by any person until the third Tuesday of August next following." Consol. Laws of N. Y. vol. 5, p. 5859; N. Y. Laws 1909, chap. 62, § 36. In Maryland, a record of property assessed is required to be kept, and the valuation thereof, with alphabetical list of owners, recorded in a book, "which any person may inspect without fee or reward." Pub. Laws (Md.) vol. 2, p. 1804, § 23. In Pennsylvania, it is provided that from the time of publishing the assessor's returns until the day appointed for finally determining whether the assessor's valuations are too low, "any taxable inhabitant of the county shall have the right to examine the said return in the commissioner's office." Pepper & L. Dig. Laws (Pa.) vol. 2, p. 4591, § 357. In New Hampshire, the list of taxes assessed are required to be kept in a book, and also left with the town clerk, and such records "shall be open to the inspection of all persons." Pub. Stat. (N. H.) 1901, p. 214, § 5.

It has been suggested that there is a lack of power to tax foreign corporations, doing local business in a state, in the manner proposed in this act, and that the tax upon such corporations, being unconstitutional, works such inequality against domestic corporations as to invalidate the law. It is sufficient to say of this that no such case is presented in the record. Southern R. Co. v. King, 217 U. S. 525, 54 L. ed. 868, 30 Sup. Ct. Rep. 594. This is equally true as to the alleged invalidity of the act as a tax on exports, which is beyond the power of Congress. No such case is presented in those now before the court.

We have noticed such objections as are made to the constitutionality of this law as it is deemed necessary to consider. Finding the statute to be within the constitutional power of the Congress, it follows that the judgments in the several cases must be affirmed.

Affirmed.

UNITED STATES SUPREME COURT.

AMORY ELIOT, Appt., v. JAMES G. FREEMAN. Robert A. Boit, Nathanael Thayer, and Robert H. Gardner. (No. 448.)

MAINE BAPTIST MISSIONARY CONVENTION, Appt., v. CHARLES E. COTTING, and Charles F. Adams, 2d, Trustees, etc. (No. 496.)

[220 U. S. 178, 55 L. ed. 424.]

Internal revenue — Federal corporation tax — applicability to real estate trusts.

Real estate trusts created by deed for the purchasing, improving, holding, or selling lands and buildings for the benefit of the shareholders, which do not derive any benefit from, and are not organized under, any statute of the state, and which, by their terms, end with lives in being and twenty years thereafter, are not subject to the excise imposed by the act of August 5, 1909 (36 Stat. at L. 11, 112–117, chap. 6, U. S. Comp. Stat. Supp. 1909, pp. 659, 844–849) § 38, upon the doing of business by corporations, joint stock companies, or associations

"now or hereafter organized under the laws of the United States or of any state or territory."

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[Nos. 448 and 496.]

Argued January 19, 1911. Decided March 13, 1911.

Two appeals from the Circuit Court of the United States for the District of Massachusetts to review decrees sustaining demurrers to and dismissing bills filed by *cestuis que trust* to enjoin the trustees from compliance with the Federal corporation tax. Reversed.

The facts are stated in the opinion.

Mr. *Moorfield Storey* argued the cause, and, with Messrs. *Richard W. Hale* and *Frank W. Grinnell,* filed a brief for appellant in No. 448:

The respondents are not carrying on or doing business.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; Smith v. Anderson, L. R. 15 Ch. Div. 276, 50 L. J. Ch. N. S. 39, 43 L. T. N. S. 329, 29 Week. Rep. 21.

There is no joint stock company or association.

Smith v. Anderson, supra.

The trust was not organized for profit. Reg. v. Whitmarsh, 15 Q. B. 618; Bear v. Bromley, 18 Q. B. 276, 21 L. J. Q. B. N. S. 354, 16 Jur. 450, 7 Eng. R. & C. Cas. 507; Moore v. Rawlins, 6 C. B. N. S. 315, 28 L. J. C. P. N. S. 247, 5 Jur. N. S. 941; Smith v. Anderson, L. R. 15 Ch. Div. 273, 50 L. J. Ch. N. S. 39, 43 L. T. N. S. 329, 29 Week. Rep. 21.

The defendants have not a capital stock represented by shares within the meaning of the act.

28 Ops. Atty. Gen. p. 194, Feb. 14th 1910; Mayo v. Moritz, 151 Mass. 481, 24 N. E. 1083; Howe v. Morse, 174 Mass. 502, 55 N. E. 213; Phillips v. Blatchford, 137 Mass. 510; Gleason v. McKay, 134 Mass. 419; Opinion of Justices, 196 Mass. 603, 85 N. E. 545.

The defendants are not organized under the laws of Massachusetts. The unwritten law is never correctly spoken of in the plural.

Swift v. Tyson, 16 Pet. 1, 18, 10 L. ed. 865, 871; Baltimore & O. R. Co. v. Baugh, 149 U. S. 369, 371, 37 L. ed. 772, 774, 13 Sup. Ct. Rep. 914.

The expression, "organized under the laws of," plainly refers to an organization under some statute law authorizing such organization. There have been such statutes in New York and other places, as appears in Taft v. Ward, 106 Mass. 522, and the act undoubtedly refers to companies organized under laws of that kind.

Edwards v. Warren Linoline & Gasoline Works, 168 Mass. 564, 38 L.R.A. 791, 47 N. E. 502; Oliver v. Liverpool & L. Life & F. Ins. Co. 100 Mass. 531, 10 Wall. 566, 19 L. ed. 1029; People ex rel. Platt v. Wemple, 117 N. Y. 136, 6 L.R.A. 303, 2 Inters. Com. Rep. 735, 22 N. E. 1046; Gregg v. Sanford, 12 C. C. A. 525, 28 U. S. App. 313, 65 Fed. 151.

Where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.

Spreckels Sugar Ref. Co. v. McClain, 51 C. C. A. 201, 113 Fed. 247, 192 U. S. 397, 416, 48 L. ed. 496, 503, 24 Sup. Ct. Rep. 376.

A statute will not be construed so as to violate the Constitution, unless its language imperatively demands it.

Knights Templars' & M. Life Indemnity Co. v. Jarman, 187 U. S. 197, 205, 47 L. ed. 139, 145, 23 Sup. Ct. Rep. 108; United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U. S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Rep. 527.

This court has decided that a tax on the income is a tax on the land, and therefore a direct tax, which must be levied according to the rule of apportionment.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; Knowlton v. Moore, 178 U. S. 82, 44 L. ed. 986, 20 Sup. Ct. Rep. 747.

But even if the tax is treated as an excise tax, it cannot be sustained.

United States v. Singer, 15 Wall. 111, 121, 21 L. ed. 49, 51; Roup's Case, 81 *Pa. 211; Cooley, Const. Lim. pp. 695, 697; People ex rel. Detroit & H. R. Co. v. Salem, 20 Mich. 473, 4 Am. Rep. 400; Portland Bank v. Apthorp, 12 Mass. 258;

Southern R. Co. v. Greene, 216 U. S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 155, 165, 41 L. ed. 666, 668, 671, 17 Sup. Ct. Rep. 255: Chicago, M. & St. P. R. Co. v. Westby, — L.R.A.(N.S.) —, 102 C. C. A. 65, 178 Fed. 624.

Mr. *Burton E. Eames* argued the cause, and, with Messrs. *Charles H. Tyler, Owen D. Young,* and *Clement F. Robinson,* filed a brief for appellant in No. 496:

All tax laws should be construed strictly.

Sutherland Stat. Const. 2d ed. §§ 536, 537; Cooley, Taxn. pp. 453 et seq.; United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; Benziger v. United States, 192 U. S. 38, 48 L. ed. 331, 24 Sup. Ct. Rep. 189; Sewall v. Jones, 9 Pick. 412; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 416, 48 L. ed. 496, 503, 24 Sup. Ct. Rep. 376.

The department store trust is not "organized under the laws." The word "laws" should be held to include only statute laws, and not the general body of the common law.

Brinckerhoff v. Bostwick, 99 N. Y. 185, 1 N. E. 663; State ex rel. Clapp v. Sioux City & N. R. Co. 43 Minn. 17, 44 N. W. 1032.

The natural meaning of the word "organized" connotes an idea of creating an entity, if it does not connote actual incorporation.

Dodge v. Williams, 46 Wis. 70, 1 N. W. 92, 50 N. W. 1103.

It seems to be an unusual use of a term, to call the department store trust "organized." A corporation is "organized." A trust is "made," "declared," "created," or "entered into," but hardly "organized."

Hinds v. Marmolejo, 60 Cal. 231; Daggs v. Phœnix Nat. Bank, 5 Ariz. 409, 53 Pac. 201; Lindsay & P. Co. v. Mullen, 176 U. S. 126, 44 L. ed. 400, 20 Sup. Ct. Rep. 325.

If we take the expression "joint stock company or association organized under the laws" to mean a joint stock company or association organized under and by virtue of certain statutes and deriving certain special privileges therefrom, we describe a form of organization which has a real existence in this country, and is radically different from the department store trust.

Lyon v. Denison, 80 Mich. 371, 8 L.R.A. 358, 45 N. W.

358; Hussey v. Arnold, 185 Mass. 202, 70 N. E. 87; Atty. Gen. v. Mercantile M. Ins. Co. 121 Mass. 524; Cook, Corp. § 505; Andrews Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 293. 58 U. S. App. 444, 86 Fed. 585.

There is no intermediate form in Massachusetts between a corporation and a partnership, although a joint stock company may exist under the common law of that state solely as a partnership.

Phillips v. Blatchford, 137 Mass. 510; Ricker v. American Loan & T. Co. 140 Mass. 346, 5 N. E. 284.

In court proceedings these organizations are generally treated as corporations in so far that, by virtue of the statutes, actions may be brought by or against them in their association names.

Oak Ridge Coal Co. v. Rogers, 108 Pa. 147; Westcott v. Fargo, 61 N. Y. 542, 19 Am. Rep. 300; Saltsman v. Shults, 14 Hun, 256; Van Aernam v. Bleistein, 102 N. Y. 355, 7 N. E. 537; Hibbs v. Brown, 112 App. Div. 214, 98 N. Y. Supp. 353, 190 N. Y. 167, 82 N. E. 1108; Platt v. Colvin, 50 Ohio St. 703, 36 N. E. 735; Adams Exp. Co. v. State, 55 Ohio St. 69, 44 N. E. 506; Edgeworth v. Wood, 58 N. J. L. 463, 33 Atl. 940; Boatner v. American Exp. Co. 122 Fed. 714; Adams Exp. Co. v. Schofield, 111 Ky. 832, 64 S. W. 903.

In the Federal courts formerly these organizations were treated jurisdictionally as corporations (Andrews Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 293, 58 U. S. App. 444, 86 Fed. 585); but since the case of Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449, 44 L. ed. 842, 20 Sup. Ct. Rep. 690, the contrary has been held.

See also Saunders v. Adams Exp. Co. 136 Fed. 494; Fred Macey Co. v. Macey, 68 C. C. A. 363, 135 Fed. 725; Taylor v. Weir, 96 C. C. A. 438, 171 Fed. 636; Chapman v. Barney, 129 U. S. 677, 32 L. ed. 809, 9 Sup. Ct. Rep. 426.

In Massachusetts the courts have never allowed the joint stock companies of other states to be treated as entities in court proceedings.

Taft v. Ward, 106 Mass. 518; Bodwell v. Eastman, 106 Mass. 525; Gott v. Dinsmore, 111 Mass. 45; Boston & A. R. Co. v. Pearson, 128 Mass. 445; Edwards v. Warren Linoline & Gasoline Works, 168 Mass. 564, 38 L.R.A. 791, 47 N. E. 502.

In the case of statutory joint stock companies, the law sometimes permits title to be taken in the name of the association, which may even have a seal for use on deeds of the property.

Eliot v. Himrod, 108 Pa. 569; Briar Hill Coal & I. Co. v. Atlas Works, 146 Pa. 290, 23 Atl. 326; Kountz's Appeal, 204 Pa. 432, 54 Atl. 316.

A member of a Pennsylvania joint stock company (like the stockholder of a corporation) would not be liable individually for the torts of the managers of the association, unless he should personally participate.

Whitney v. Backus, 149 Pa. 29, 24 Atl. 51; Hill v. Stetler, 127 Pa. 162, 13 Atl. 306, 17 Atl. 887.

An express company organized under the laws of New York as a joint stock company is sufficiently a corporation to sustain an indictment for the embezzlement of its funds as of the funds of a "corporation."

Kossakowski v. People, 177 Ill. 563, 53 N. E. 115.

Under the decisions of New York and Pennsylvania, in order to include these statutory joint stock companies and associations with corporations in a tax act, they must be mentioned in terms.

Hoey v. Coleman, 46 Fed. 221; People ex rel. Winchester v. Coleman, 133 N. Y. 279, 16 L.R.A. 183, 31 N. E. 96; People ex rel. Platt v. Wemple, 117 N. Y. 136, 6 L.R.A. 303, 2 Inters. Com. Rep. 735, 22 N. E. 1046; Sanford v. Gregg, 58 Fed. 620, 12 C. C. A. 525, 28 U. S. App. 313, 65 Fed. 151.

No tax is laid upon these trusts in Massachusetts, except the ordinary tax upon the property. This property is taxed to the trustees, like the property of any other trust. The beneficiaries have a purely equitable interest in the property, and no tax is laid upon their interest.

Hussey v. Arnold, 185 Mass. 202, 70 N. E. 87; Kinney v. Treasurer & Receiver General, 207 Mass. 368, — L.R.A. (N.S.) —, 93 N. E. 586.

It is to be noted, however, that, in one case originating in Massachusetts, statutory joint stock companies were treated as corporations for the purpose of taxation.

Oliver v. Liverpool & L. Life & F. Ins. Co. 100 Mass. 531, 10 Wall. 566, 19 L. ed. 1029.

Perhaps the most important statutory privilege given in certain states to the statutory joint stock company is the privilege of limited liability.

Oak Ridge Coal Co. v. Rogers, 108 Pa. 147; Stevens v. Philadelphia Ball Club, 142 Pa. 52, 11 L.R.A. 860, 21 Atl. 797; Staver & A. Mfg. Co. v. Blake, 111 Mich. 282, 38 L.R.A. 798, 69 N. W. 508.

Statutory joint stock companies possess other privileges which are unlike anything of which the department store trust can avail itself.

Citizens' Sav. Bank v. Vaughan, 115 Mich. 156, 73 N. W. 143; Rhoades v. Malta Vita Pure Food Co. 149 Mich. 236, 112 N. W. 940; Pittsburg Melting Co. v. Reese, 118 Pa. 355, 12 Atl. 362; Walker v. Keystone Brewing Co. 131 Pa. 546, 20 Atl. 309; Mercantile Nat. Bank v. Lauth, 143 Pa. 53, 21 Atl. 1017; Andrews Bros. Co. v. Youngstown Coke Co. 39 Fed. 353; Dickinson v. Matheson Motor Car Co. 161 Fed. 874; Park Bro. & Co. v. Harwi, 2 Kan. App. 629, 42 Pac. 939.

This trust has no capital stock represented by shares.

Hussey v. Arnold, 185 Mass. 202, 70 N. E. 87; Linnell v. Leon, 206 Mass. 71, 91 N. E. 895; Kinney v. Treasurer & Receiver General, 207 Mass. 368, — L.R.A.(N.S.) —, 93 N. E. 586.

This trust is not carrying on or doing business.

People ex rel. Parker Mills v. Tax Comrs. 23 N. Y. 242; Re Alabama & C. R. Co. 9 Blatchf. 390, Fed. Cas. No. 124.

Solicitor General *Lehman* argued the cause, and, with Mr. Henry E. Colton, filed a brief for the United States:

The common law is, just as much as the statutes, a part of the laws of a state; and the statutes are often nothing more than declarations of the common law.

Van Ness v. Hyatt, 13 Pet. 294, 298, 10 L. ed. 168, 170; Morsell v. First Nat. Bank, 91 U. S. 357, 359, 23 L. ed. 436, 437; Bucher v. Cheshire R. Co. 125 U. S. 555, 583, 584, 31 L. ed. 795, 798, 799, 8 Sup. Ct. Rep. 974; Phelps v. The City of Panama, 1 Wash. Terr. 523; Lycoming F. Ins. Co. v. Wright, 60 Vt. 517, 12 Atl. 103.

The Cushing Real Estate Trust and the department store trust are common-law joint stock companies.

Kossakowski v. People, 177 Ill. 568, 53 N. E. 115; 1 Bates, Partn. § 72, pp. 88, 89; Taber v. Breck, 192 Mass. 361, 78 N. E. 472; Howe v. Morse, 174 Mass. 499, 55 N. E. 213; 2 Cook, Corp. 6th ed. § 504, p. 1357.

Joint stock companies are frequently, if not usually, formed under deeds of settlement and declarations of trust.

Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 568, 19 L. ed. 1029, 1030; Taber v. Breck, 192 Mass. 361, 78 N. E. 472.

The claim that these companies have no capital stock is absolutely without merit.

Howe v. Morris, 174 Mass. 496, 55 N. E. 213.

The property of a company organized for the purpose of pursuing many activities may not improperly be said to be devoted to those activities, though from time to time some of those activities are not pursued.

People ex rel. Wall & H. Street Realty Co. v. Miller, 181 N. Y. 334, 73 N. E. 1102.

The maintenance and operation of an office building is the carrying on of a business.

People ex rel. Wall & H. Street Realty Co. v. Miller, 181 N. Y. 336, 73 N. E. 1102.

Mr. Justice Day delivered the opinion of the court:

These cases present facts differing from those involved in the consideration of the corporation tax cases, just decided. Flint v. Stone Tracy Co. [220 U. S. 107, ante, 389, 31 Sup. Ct. Rep. 342.]

In No. 448, the question is raised as to the right to lay a tax under this statute upon a certain trust formed for the purpose of purchasing, improving, holding, and selling lands and buildings in Boston, known as the Cushing Real Estate Trust. By the terms of the trust, the property was conveyed to certain trustees, who executed a trust agreement whereby the management of the property was vested in the trustees, who had absolute control and authority over the same, with right to sell for cash or credit, at public or private sale, and with full power to manage the property as they deemed best for the interest of the shareholders. The shareholders are to be paid dividends from time to time from the net income or net proceeds of the prop-

erty, and twenty years after the termination of lives in being, the property to be sold, and the proceeds of the sale to be divided among the parties interested. The trustees were to issue 4,800 shares to the owners of the property, at $100 each, the owners to receive a number of shares equal to the value of the interest conveyed to the trustees. The shares were transferable on the books of the trustees, and on surrender of the certificate, and the transfer thereof in writing, a new certificate is to issue to the transferee. No shareholder had any legal title or interest in the property, and no right to call for the partition thereof during the continuance of the trust. The legal representatives of a shareholder are to succeed to the interest of a shareholder, the interest passing by operation of law. Provision is made for the termination of the trust by an instrument or instruments in writing, signed by not less than three fourths of the value of stock held by shareholders. Meetings of the shareholders are held at their discretion, or whenever requested in writing by five shareholders, or by shareholders owning not less than one tenth of the shares in value.

The trust has a building, leasing it to a single tenant. It also maintains and operates an office building with elevator service, janitor service, etc.

Case No. 496 involves what is known as a department store trust. It was created by deed, and formed for the purpose of purchasing and holding certain parcels of land in the city of Boston, and erecting a building thereon suitable for a department store. The land and buildings are leased to one tenant for a period of thirty years. The trust had transferable certificates issued to shareholders at the par value of $100 each. The trustees conduct the affairs of the trust, manage the property, and pay dividends when declared. The shareholders meet annually, and a majority of them have the power to elect and depose trustees, and to alter and amend the terms of the trust agreement. This trust also continues for certain lives in being and for twenty years thereafter. Each of the trusts involved in these cases is in receipt of a net income exceeding $5,000.

Under the terms of the corporation tax act, corporations and joint stock associations must be such as are "now or hereafter organized under the laws of the United States, or of any state

or territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia."

The pertinent question in this connection is: Are these trusts organized under the laws of the state? As we have construed the corporation tax act in the previous cases (Flint v. Stone Tracy Co. ante, 389), the tax is imposed upon doing business in a corporate or quasi corporate capacity; that is, with the facility or advantage of corporate organization.

It was the purpose of the act to treat corporations and joint stock companies, similarly organized, in the same way, and assess them upon the facility in doing business which is substantially the same in both forms of organization. Joint stock organizations are not infrequently organized under the statute laws of a state, deriving therefrom, in a large measure, the characteristics of a corporation.

The language of the act " * * * now or hereafter organized under the laws of the United States," etc., imports an organization deriving power from statutory enactment. The statute does not say under the law of the United States, or a state, or lawful in the United States or in any state, but is made applicable to such as are organized under the laws of the United States, etc. The description of the corporation or joint stock association as one organized under the laws of a state at once suggests that they are such as are the creation of statutory law, from which they derive their powers and are qualified to carry on their operations.

A trust of the character of those here involved can hardly be said to be organized, within the ordinary meaning of that term; it certainly is not organized under statutory laws as corporations are. The difference between joint stock associations at common law and those organized under statutes is well recognized (2 Cook, Corp. § 505):

"There is an essential difference between a joint stock company as it exists at common law and a joint stock company having extensive statutory powers conferred upon it by the state within which it is organized. The latter kind of joint stock companies is found in England and in the state of New York. To such an extent have these statutory powers been conferred on joint stock companies that the only substantial difference be-

tween them and corporations is that the members are not exempt from liability as partners for the debts of the company."

The two cases now under consideration embrace trusts which do not derive any benefit from and are not organized under the statutory laws of Massachusetts. Joint stock companies of the statutory character are not known to the laws of that commonwealth. Ricker v. American Loan & T. Co. 140 Mass. 346, 5 N. E. 284. These trusts do not have perpetual succession, but end with lives in being and twenty years thereafter.

Entertaining the view that it was the intention of Congress to embrace within the corporation tax statute only such corporations and joint stock associations as are organized under some statute, or derive from that source some quality, or benefit not existing at the common law, we are of opinion that the real estate trusts involved in these two cases are not within the terms of the act. In that view the decrees in both cases will be reversed and the same remanded to the Circuit Court of the United States for the District of Massachusetts, with directions to overrule the demurrers, and for further proceedings consistent with this opinion.

Reversed.

UNITED STATES SUPREME COURT.

ARY E. ZONNE, Appt., v. MINNEAPOLIS SYNDICATE, John De Laittre, Treasurer, and J. Frank Conklin, Assistant Treasurer.

[220 U. S. 187, 55 L. ed. 428.]

Internal revenue — excise on corporations — doing business.

A corporation organized for the purpose of owning and renting an office building, but which has wholly parted with the control and management of the property, and by the terms of a reorganization has disqualified itself from any activity in respect to it, its sole authority being to hold the title subject to a lease for 130 years, and to receive and distribute the rentals which may accrue under the terms of the lease, or the proceeds of any sale of the land, if it shall be sold, is not doing business within the meaning of the act of August 5, 1909 (36 Stat. at L. 11, 112–117, chap. 6, U. S. Comp. Stat. Supp. 1909, pp. 659,

844–849), § 38, imposing an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[No. 627.]

Submitted January 19, 1911. Decided March 13, 1911.

Appeal from the Circuit Court of the United States for the District of Minnesota to review a decree sustaining a demurrer to and dismissing a bill filed by a stockholder to restrain the corporation and its officers from complying with the Federal corporation tax. Reversed.

The facts are stated in the opinion.

Mr. *John R. Van Derlip* submitted the cause for appellant. Mr. *Burt F. Lum* was on the brief:

The grant to the incorporators of being and acting as a corporation differs from the privilege or franchise vested in the corporation, in that the power to do business as a corporation is the right and privilege — or franchise—of the incorporators.

Memphis & L. R. R. Co. v. Railroad Comrs. (Memphis & L. R. R. Co. v. Berry) 112 U. S. 609, 619, 28 L. ed. 837, 841, 5 Sup. Ct. Rep. 299; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Ashley v. Ryan, 153 U. S. 436, 38 L. ed. 773, 4 Inters. Com. Rep. 664, 14 Sup. Ct. Rep. 865; Paul v. Virginia, 8 Wall. 181, 19 L. ed. 360; Horn Silver Min. Co. v. New York, 143 U. S. 305, 312, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403; Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co. 86 Tex. 143, 22 L.R.A. 802, 24 S. W. 16.

Since franchises are property, and taxable as such (Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482; Central P. R. Co. v. California, 162 U. S. 91, 126, 40 L. ed. 903, 915, 16 Sup. Ct. Rep. 766; Horn Silver Min. Co. v. New York, 143 U. S. 305, 313, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403); since it must be admitted that a franchise has no value save that which arises from the use and enjoyment of it; and since it is impossible to force a distinction between that which gives value to the property and the property itself (Pollock v. Farmers' Loan & T. Co. 158 U. S. 625, 626, 628, 39 L. ed. 1121, 1122, 15 Sup. Ct. Rep. 912),—the conclusion

is inevitable that a tax upon the use of a franchise is a tax upon the franchise itself, and, unapportioned, is invalid.

See also Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522.

When the liability of a corporation to pay a tax is made wholly dependent upon its earning a net income, and when the amount of the tax to be paid is wholly dependent upon the amount of such net income, it is impossible to escape the conclusion that, whatever it may be called, or under whatever law it may be imposed, the tax is an income tax, pure and simple.

Nicol v. Ames, 173 U. S. 515, 43 L. ed. 791, 19 Sup. Ct. Rep. 522.

The practical nature of the tax itself, its natural and reasonable effect, the criterion adopted to determine what corporations fall within the law, the measure of the burden in each case, all demonstrate to a certainty that the tax is in its character, and in the purpose of its authors an income tax, regardless of the language in which the statute is framed.

Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543; State Freight Tax Case, 15 Wall. 232, 272, 21 L. ed. 146, 160; Cook v. Pennsylvania, 97 U. S. 566, 24 L. ed. 1015.

While an excise law must operate with uniformity throughout the United States, such uniformity demands not alone that it shall apply to the specified subjects of taxation wherever found, but equally that it shall lay its burden with just and uniform proportion upon each subject within its embrace.

Head Money Cases (Edye v. Robertson) 112 U. S. 580, 28 L. ed. 798, 5 Sup. Ct. Rep. 247; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; United States v. Singer, 15 Wall. 111, 21 L. ed. 49; Home Ins. Co. v. New York, 134 U. S. 594, 607, 33 L. ed. 1025, 1032, 10 Sup. Ct. Rep. 593.

The Minneapolis Syndicate is not, and since January 1, 1907, has not been, a corporation organized for profit.

Mundy v. Van Hoose, 104 Ga. 292, 30 S. E. 783; Gray v. Darlington, 15 Wall. 63, 21 L. ed. 45; Bennett v. Austin, 81 N. Y. 319; People ex rel. McMaster v. Niagara County, 4 Hill, 20.

It is not, and since January 1, 1907, it has not been, carrying on or doing business of any kind.

Roberts v. State, 26 Fla. 362, 7 So. 861; State v. Boston Club, 45 La. Ann. 585, 20 L.R.A. 185, 12 So. 895; Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co. 86 Tex. 153, 22 L.R.A. 802, 24 S. W. 16; Graham v. Hendricks, 22 La. Ann. 524; Harris v. State, 50 Ala. 127; Re Alabama & C. R. Co. 9 Blatchf. 390, Fed. Cas. No. 124; Holmes v. Holmes, 40 Conn. 117; 21 Am. & Eng. Enc. Law, 2d ed. p. 811, notes 6, 8; People v. Horn Silver Min. Co. 105 N. Y. 83, 11 N. E. 155; State v. Barnes, 126 N. C. 1063, 35 S. E. 605; State v. Anniston Rolling Mills, 125 Ala. 121, 27 So. 921; Goddard v. Chaffee, 2 Allen, 395, 79 Am. Dec. 796; Hickey v. Thompson, 52 Ark. 237, 12 S. W. 475; Shryock v. Latimer, 57 Tex. 677; Braeutigam v. Edwards, 38 N. J. Eq. 545.

Mr. *John R. Van Derlip* also filed a separate brief for appellant:

The carrying on or doing of business connotes something more than a single isolated act; it implies continuity of activity along some given line.

Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 28 L. ed. 1137, 5 Sup. Ct. Rep. 739; General Conference v. Berkey, 156 Cal. 466, 105 Pac. 411; Atlantic Postal Teleg.-Cable Co. v. Savannah, 133 Ga. 66, 65 S. E. 184; Smith v. Anderson, L. R. 15 Ch. Div. 247, 50 L. J. Ch. N. S. 39, 43 L. T. N. S. 329, 29 Week. Rep. 21.

The corporation must be organized for profit.

Smith v. Anderson, L. R. 15 Ch. Div. 247, 50 L. J. Ch. N. S. 39, 43 L. T. N. S. 329, 29 Week. Rep. 21.

Solicitor General *Lehman* submitted the cause for the United States:

The tax is an excise to which a corporation is subjected with respect to the business done by it, measured by its income from all sources, as it was in Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95, and Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647, and this, in no event nor to any extent, makes the tax one upon property, for a corporation is organized to do something, and not simply to exist, and it holds its property not in mortmain, but as a means of, or an aid to, the accomplishment of that which it was

organized to do. The activity of the company is not made the measure of the tax, except as that may manifest itself in the income; and, on the other hand, that sloth is not made a reason for deduction from the measure cannot be a valid objection to the propriety of that measure.

Mr. Justice Day delivered the opinion of the court:

This case involves the validity of the corporation tax act just passed upon in No. 407, Flint v. Stone Tracy Co. [220 U. S. 107, ante, 389, 31 Sup. Ct. Rep. 342.]

The case presents a peculiarity of corporate organization and purpose not involved in the cases just decided. The Minneapolis Syndicate, as the allegations of the bill, admitted by the demurrer, show, was originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor. On the 27th of December, 1906, the corporation demised and let all of the tracts, lots, and parcels of land belonging to it, being the westerly half of block 87 in the city of Minneapolis, to Richard M. Bradley, Arthur Lyman, and Russell Tyson, as trustees, for the term of 130 years from January 1, 1907, at an annual rental of $61,000, to be paid by said lessees to said corporation. At that time the corporation caused its articles of incorporation, which had theretofore been those of a corporation organized for profit, to be so amended as to read:

"The sole purpose of the corporation shall be to hold the title to the westerly one half of block 87 of the town of Minneapolis, now vested in the corporation, subject to a lease thereof for a term of 130 years from January 1, 1907, and, for the convenience of its stockholders, to receive, and to distribute among them, from time to time, the rentals that accrue under said lease, and the proceeds of any disposition of said land."

As we have construed the corporation tax law (Flint v. Stone Tracy Co. supra), it provides for an excise upon the carrying on or doing of business in a corporate capacity. We have held in the preceding cases that corporations organized for profit under the laws of the state, authorized to manage and rent real estate, and being so engaged, are doing business within the meaning of the law, and are therefore liable to the tax imposed.

The corporation involved in the present case, as originally organized and owning and renting an office building, was doing

business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land, if it should be sold. The corporation had practically gone out of business in connection with the property, and had disqualified itself by the terms of reorganization from any activity in respect to it. We are of opinion that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909 [36 Stat. at L. 112, chap. 6, § 38, U. S. Comp. Stat. Supp. 1909, p. 844]. Holding this view, we think the court below erred in sustaining the demurrer to the bill. The decree of the court below is therefore reversed and the cause remanded to the Circuit Court of the United States for the District of Minnesota, with directions to overrule the demurrer, and for further proceedings consistent with this opinion.

Reversed.

UNITED STATES SUPREME COURT.

WILLIAM McCOACH, Collector of Internal Revenue, Petitioner, v. MINEHILL & SCHUYLKILL HAVEN RAILROAD COMPANY.

[228 U. S. 295, 57 L. ed. 842.]

Internal revenue — excise on corporation — doing business.

1. A railroad company which, under legislative authority, has leased its entire railroad, with all its rights, powers, privileges, and franchises (except the franchise of being a corporation), for a term of years, at an annual rental, the lessees agreeing to keep the road in good order and repair, keep it in public use, and efficiently operate it and return it to the lessor company at the expiration or other determination of the lease, is not, with respect to the railroad, "engaged in business," within the meaning of the Federal corporation tax law of August 5, 1909 (36 Stat. at L. 11, 112–117, chap. 6, U. S. Comp. Stat.

Supp. 1911, pp. 741, 946–951), § 38, imposing an excise tax upon corporations doing business in any state, although it retains the franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain or other reserved powers if and when required by the lessee, and ready to resume possession of the property at the expiration of the lease.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue — excise on corporation — doing business.

2. The mere receipt by a lessor railway company of the income from its leased railway property (the property being used in business by the lessee, and not by the lessor), and the receipt of interest and dividends from invested funds, bank balances, and the like, and the payment of organization and administration expenses incidental to the receipt of such moneys, and their distribution among the stockholders, do not constitute such a business as is taxable under the Federal corporation tax law of August 5, 1909, § 38, imposing an excise tax upon the doing or carrying on of business in a corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[No. 670.]

Argued January 14 and 15, 1913. Decided April 7, 1913.

On writ of Certiorari to the United States Circuit Court of Appeal for the Third Circuit to review a judgment which affirmed a judgment of the District Court for the Eastern District of Pennsylvania for the recovery back of certain taxes exacted under the Federal corporation tax law. Affirmed.

The facts are stated in the opinion.

Solicitor General *Bullitt* argued the cause and filed a brief for petitioner:

If a corporation exercises its privilege to do any business in a corporate capacity, no matter how small such business is, it is subject to the tax.

Flint v. Stone Tracy Co. 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

The doctrine of Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361, will have to be considerably extended in order to include the case at bar.

Mr. *George Wharton Pepper* argued the cause, and, with Messrs. *Eli Kirk Price* and *William B. Bodine, Jr.*, filed a brief for respondent:

To be a corporate landlord is not equivalent to doing business.

Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361.

Messrs. *E. Parmalee Prentice, George Welwood Murray,* and *Charles P. Howland* filed a brief as *amici curiæ* for the Albany & Susquehanna Railroad Company:

The Federal corporation tax is imposed not upon franchises of the corporation irrespectively of their use in business, nor upon the property of the corporation, but upon the doing of corporate business and with respect to the carrying on thereof, that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described.

Flint v. Stone Tracy Co. 220 U. S. 145, 55 L. ed. 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

The corporation tax cannot be measured by so much of the rental of leased property as is paid by the lessee to stockholders of the lessor, and probably the same argument would apply to the portion of rental paid as interest to bond holders, for here, too, so far as relates to the present question, there has been a novation.

Humphreys v. McKissock, 140 U. S. 304, 35 L. ed. 473, 11 Sup. Ct. Rep. 779.

No corporation makes money by stockholder's meetings, election of officers and preservation of franchises—necessary as these and many other acts may be.

Pennsylvania Steel Co. v. New York City R. Co. 193 Fed. 286; 117 C. C. A. 556, 198 Fed. 774; Albany & Susquehanna R. Co. v. Durey, N. Dist. Ct. N. Y. April, 1912; Morris & Essex R. Co. v. Anderson, S. Dist. Ct. N. Y. March, 1912; Mine Hill & S. H. R. Co. v. McCoach, 192 Fed. 670, affirmed C. C. A. 3rd C. March Term, 1912.

Mr. Justice Pitney delivered the opinion of the court:

The Minehill & Schuylkill Haven Railroad Company, the respondent herein (called for convenience the Minehill Company), sued the petitioner, who is collector of internal revenue at Philadelphia, to recover certain taxes for the years 1909 and 1910, paid under protest by that company under the corporation tax act of 1909. [36 Stat. at L. 11, chap. 6, U. S. Comp. Stat. Supp. 1911, p. 741.] The United States circuit

court held that the company was not "engaged in business" within the meaning of the act, and that therefore the taxes had been illegally assessed, and rendered judgment for their recovery. 192 Fed. 670. The circuit court of appeals affirmed the judgment, and the case comes here upon certiorari.

The facts appear from the plaintiff's statement of claim and the defendant's affidavit of defense, which latter was overruled as insufficient. They may be summarized as follows: The Minehill Company was incorporated by an act of the legislature of the state of Pennsylvania, approved March 24, 1828 (P. L. p. 205), for the purpose of constructing and operating a railroad, with appropriate powers, including the power of eminent domain. Under this charter a railroad was built and for many years operated. Under the authority of general acts of the legislature, approved respectively April 23, 1861 (P. L. p. 410), and February 17, 1870 (P. L. p. 31), the Minehill Company, in the year 1896, leased its entire railroad, with all side tracks, extensions, and appurtenances of every kind, and all rolling stock and personal property of every description, in use or adapted for use in, upon, or about the railroad (excepting some property intended to have been described in a schedule annexed to the lease, but which is not described, no such schedule having been annexed), and also—"All the rights, powers, franchises (other than the franchise of being a corporation), and privileges which may now, or at any time hereafter during the time hereby demised, be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration, or improvement of the demised premises, or any of them," unto the Philadelphia & Reading Railway Company for a term of nine hundred and ninety-nine years from January 1, 1897, at a yearly rental of $252,612, that being equivalent to 6 per centum upon the capital stock of the Minehill Company.

The lessee agreed to keep the road in good order and repair, keep it in public use and efficiently operate it, and return it to the lessor company at the expiration or other determination of the lease. The Minehill Company agreed during the term of the lease to maintain its corporate existence and organization, and that when requested by the lessee it would "put in force and exercise each and every corporate power, and do each and

every corporate act, which the Minehill Company might now, or at any time hereafter, lawfully put in force or exercise, to enable the railway company (the lessee) to enjoy, avail itself of, and exercise, every right, franchise, and privilege in respect of the use, management, maintenance, renewal, extension, etc., of the property demised, and of the business to be there carried on." It was provided that upon default in the payment of the rent reserved, or in the performance of certain other covenants, the lessor might declare the lease forfeited, and re-enter and repossess the demised premises. The lease further provided that the lessee might, under certain circumstances, abandon certain railway lines "whenever it shall be found legally practicable to abandon so much of the said lines of railroad, without working a forfeiture or any impairment of the chartered rights and franchises of the Minehill Company as to its railroads, or any part thereof, or without creating any liability on the part of the Minehill Company or the railway company, to the public or the commonwealth, for the nonuser of such portions of the railroad lines." In the event thus provided for the abandoned rails, machinery, etc., are to be sold and the proceeds turned over to the Minehill Company, and the annual rental proportionately reduced.

Pursuant to this lease the entire railroad and all property connected therewith was turned over to the Reading Company, and since then has been operated by that company, and the Minehill Company has not carried on any business in connection with the operation of it. It has, however, maintained its corporate existence and organization by the annual election of a president and board of managers, and this board has annually elected a secretary and treasurer. It receives annually from the Reading Company the fixed rental called for by the lease, and it receives annually sums of money as interest on its bank deposits, and also maintains a "contingent fund," from which it receives annual sums as interest or dividends. And it annually pays the ordinary and necessary expenses of maintaining its office and keeping up the activities of its corporate existence, including the payment of salaries to its officers and clerks. It keeps and maintains at its offices, stock books for the transfer of its capital stock, and this stock is bought and sold upon the market. The annual income from the contingent fund appears

to be about $24,000, its annual payments for state taxes about as much, and its expenditures for corporate maintenance about $5,000.

The corporation tax law (act of August 5, 1909, § 38, 36 Stat. at L. chap. 6, pp. 11, 112–117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946–951) provides:

"That every corporation * * * organized for profit and having a capital stock represented by shares * * * and engaged in business in any state * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to one per centum upon the entire net income over and above $5,000, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations * * * subject to the tax hereby imposed. * * *

"Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, * * * received within the year from all sources: (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, * * *"

In Flint v. Stone Tracy Co. 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312, the question of the constitutionality of this act was presented here for decision. Upon the preliminary question of interpretation the court said (p. 145):

"It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 2 per centum upon the entire net income over and above $5,000, received from all sources during the year; that is, when imposed in this manner it is a tax upon

the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organization it may be described generally as a tax upon the doing of business in a corporate capacity. * * * The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above $5,000, from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source."

In discussing the constitutional question, reference was first made to the case of Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of the act of August 27, 1894 (28 Stat. at L. chap. 349, pp. 509, 553, §§ 27, etc. U. S. Comp. Stat. 1901, p. 2260), to be unconstitutional because amounting to a direct tax within the meaning of the Constitution, and because not apportioned according to population, as required by that instrument. Attention was called (220 U. S. 148) to the expressions used by Mr. Chief Justice Fuller, speaking for the court in the Pollock Case, upon the rehearing, as to the distinction between a tax upon the income derived from real estate and from invested personal property, on the one hand, and an excise tax upon business privileges, employments, and vocations, upon the other. Reference was also made to the interpretation put upon the decision in the Pollock Case in Knowlton v. Moore, 178 U. S. 41, 80, 44 L. ed. 969, 985, 20 Sup. Ct. Rep. 747, and in Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376, and it was held that the corporation tax law of 1909 "does not impose direct taxation upon property, solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under art. 1, § 8, cl. 1 of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States."

In applying this principle to the several cases then *sub judice,* —in some of which the validity of the tax was challenged by the stockholders of certain real estate companies whose business was principally the holding and management of real estate,— the court dealt, among others (220 U. S. 170), with the Park Realty Company, organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, apartment houses, etc.; to make and carry out contracts in the manner specified concerning buildings * * * and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc. At the time the bill was filed in that case the business of the Park Realty Company related only to the management and leasing of one hotel. Others of the realty companies that were before the court were engaged in more extensive business transactions. The court held (p. 171):

"We think it clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of this statute, and in the capacity necessary to make such organizations subject to the law."

Another case argued and decided at the same time, but separately reported, is Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361. In this case the court held that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909, because, while originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor, it had afterwards made a lease of all lands belonging to it to certain trustees for a term of 130 years, and then had caused its articles of incorporation, which had been those of a corporation organized for profit, to be so amended as to confine the purpose of the corporation to the ownership of the lands in question, subject to the lease, and "for the convenience of its stockholders to

receive, and to distribute among them, from time to time, the rentals that accrue, under said lease, and the proceeds of any disposition of said land." The court said:

"The corporation involved in the present case, as originally organized, and owning and renting an office building, was doing business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land, if it should be sold. The corporation had practically gone out of business in connection with the property, and had disqualified itself by the terms of reorganization from any activity in respect to it."

The precise question presented by the present record is whether the Minehill Company is "doing business" in the sense in which the realty companies concerned in Flint v. Stone Tracy Co. 220 U. S. 107, 170, 55 L. ed. 410, 421, 31 Sup. Ct. Rep. 342, were doing business, or had gone out of business in substantially the same sense that the Minneapolis Syndicate had done so.

From the facts as stated above it is entirely clear that the Minehill Company was not, during the years of 1909 and 1910, engaged at all in the business of maintaining or operating a railroad, which was the prime object of its incorporation. This business, by the lease of 1896, it had turned over to the Reading Company. If that lease had been made without authorization of law, it may be that for some purposes, and possibly for the present purpose, the lessee might be deemed in law the agent of the lessor; or, at least, the lessor held estopped to deny such agency. But the lease was made by the express authority of the state that created the Minehill Company, conferred upon it its franchise, and imposed upon it the correlative public duties. The effect of this legislation and of the lease made thereunder was to constitute the Reading Company the public agent for the operation of the railroad, and to prevent the Minehill

Company from carrying on business in respect of the maintenance and operation of the railroad so long as the lease shall continue. And it is the Reading Company, and not the Minehill Company that is "doing business" as a railroad company upon the lines covered by the lease, and is taxable because of it. The corporation tax law does not contemplate double taxation in respect of the same business.

The government points out that by the terms of the act the Reading Company is allowed to deduct from its gross income the $252,612 paid annually to the Minehill Company for rentals under the lease, with the result that, unless the latter company is held to be "doing business" as a railroad company, both lessor and lessee entirely escape from taxation on $252,612 of income. But an examination of the act shows that this is the precise result intended by Congress. "Net income shall be ascertained by deducting from the gross amount of the income * * * (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, *including all charges, such as rentals or franchise payments,* required to be made as a condition to the continued use or possession of property." The deduction of rentals is not confined to such as are paid to companies that are subject to the tax imposed by the act; and yet the suggestion that it might be so confined was present in the mind of the draftsman, for below there is a provision for deducting "(fifth) all amounts received * * * as dividends upon stock of other corporations * * * *subject to the tax hereby imposed.*" In short, Congress said, and intended to say, as to rentals paid for the use or possession of property and franchises employed by the lessee company in a business taxable under the act,—let there be a deduction by the lessee of the amount of such rentals, whether the lessor is within the reach of the taxing scheme or not.

We conclude that the Minehill Company was not taxable with respect to the railroad business.

It should be mentioned that there is nothing in the record to show that during the taxing years in question the company exercised its power of eminent domain, or put in force any other special corporate power, in aid of the business of the lessee. We therefore do not pass upon the question whether, if it should

do so, it would be taxable under the act in question. We cannot, however, agree with the contention made in behalf of the government, that because the Minehill Company retains its franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain, or other reserved powers, if and when required by the lessee, and ready to resume possession of the property at the expiration of the lease, it is therefore to be treated as doing business, in respect of the railroad, within the meaning of the corporation tax law. As to these matters the case is governed by what was said by the court in Flint v. Stone Tracy Co. 220 U. S. 145, 55 L. ed. 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312: "It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof." And again, p. 150,—"The tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed."

There remains to be considered the fact that the Minehill Company has a considerable amount of personal assets known as its "contingent fund," in the form of investments (the amount and particulars are not specified), from which it derives an annual income of about $24,000; that it keeps a deposit in bank, receives and collects interest upon such deposit, and distributes the income thus received, as well as the rentals received from the Reading Company (after payment of expenses and taxes), to its stockholders in the form of dividends.

In our opinion the mere receipt of income from the property leased (the property being used in business by the lessee, and not by the lessor) and the receipt of interest and dividends from invested funds, bank balances, and the like, and the distribution thereof among the stockholders of the Minehill Company, amount to no more than receiving the ordinary fruits that arise from the ownership of property. The ground of the decision in the Pollock Case was that a tax upon income received from real estate and invested personal property (as distinguished from income received from the transaction of business) was in

effect a direct tax upon the property itself, and therefore invalid unless apportioned according to population. In the Flint Case, in sustaining the act of 1909 as a tax upon the privilege of doing business in corporate form, against the objection that it includes within its reach the income of real estate and personal property not used in the business, and not the subject of taxation, the court said (220 U. S. 163): "The measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable." And again, after referring to previous decisions (220 U. S. 165): "It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which, of itself considered, is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. * * * The tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the measure of income from all sources does. Nor can it be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods; it may give a standing which shall facilitate purchases; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige."

In short, the inclusion of income derived from property in arriving at the measure of the tax to be imposed with respect to the doing of corporate business was sustained largely because the property not used in the business, and the income from

such property, have a fair relation to the business itself, and may contribute materially to its proper and economical conduct. But that reasoning furnishes no support for the contention that the mere receipt of income from property, and the payment of organization and administration expenses incidental to the receipt and distribution thereof, constitute such a business as is taxable within the meaning of the act of 1909. The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business; in which event the investment income may be added to the business income in order to arrive at the measure of the tax; and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income, and dividing it among its stockholders. In the former case the tax is payable; in the latter not.

And so, upon the whole, we think the court below correctly held that the present case is governed by Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361, and that the taxes under consideration were unlawfully imposed.

Judgment affirmed.

Mr. Justice Day, dissenting:

I am unable to concur in the opinion of the majority of the court. It seems to me that, applying the principles laid down in the Corporation Tax Cases (Flint v. Stone Tracy Co.) 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312, the Minehill & Schuylkill Haven Railroad Company is a corporation doing business within the meaning of the law, and subject to the tax.

We are advised by a brief filed by an *amicus curiæ* that the decision in this case will affect a number of cases now pending, and, owing to its importance as affecting the public revenue, I feel justified in briefly stating the grounds of my dissent.

The corporation tax is imposed under the terms of the law upon every corporation organized for profit, having a capital stock represented by shares, and engaged in business in any state. Every such corporation is subject to a special excise tax with respect to the carrying on or doing of business, equivalent

to 1 per cent upon the entire net income over and above $5,000, received by it from all sources during the taxing year. This tax, it was held in 220 U. S., was constitutionally imposed, and rests upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organization. As was said in that case, doing business is a very comprehensive term, embracing about everything in which a person can be employed, and the definition of business as "that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit" was adopted and approved. As is said in the majority opinion, the precise question in this case is, Was the Minehill Company doing business in the sense in which the term is employed in the law, or had it gone out of business in such substantial sense that it was no longer subject to the law?

I do not care to restate the facts, which are developed fully in the majority opinion. It therein appears that the Minehill Company, while it has leased its railroad for a term of years, still maintains corporate organization, keeps an office and an office force, and collects the rentals from the lessee company, and distributes the sums among its shareholders. It has also agreed to keep up its corporate organization, and, if necessary, to use its corporate powers for the benefit of the lessee. And its activities do not stop here. The affidavit in defense, filed by the collector, which I understand the Pennsylvania practice takes as true, shows that the company receives annually sums of money as interest on deposits, and maintains a contingent fund from which it also receives annual sums as dividends. The return discloses that the amount of dividends received for the year ending December 31, 1909, as interest on deposits, and from its contingent fund, was $24,471.07. The nature and amount of the investments are not specified in the record, but they must be very considerable, in view of the annual income derived.

We are therefore brought to the direct question, is a live corporation which, though it has leased its railroad property for a term of years, maintains and has agreed to maintain its corporate organization, collects and distributes an annual rental of $252,612, keeps and maintains an office and an office force at large expense, deposits money upon interest, and receives and distributes the earnings thereof, invests a large fund which,

together with interest on deposits, yields over $24,000 a year, doing business within the meaning of the corporation tax act? The amount of business done is utterly immaterial. The doing of any business with the advantages which inhere in corporate organization brings the corporation within the terms of the act. Such was the ruling in the Flint Case, after full consideration by this court of the terms and scope of the law.

It is said, however, that this case is controlled by the ruling in the Zonne Case, which was decided at the same time as the Flint Case (220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361). It seems to me that the present case is quite unlike that one. There the corporation, which owned a piece of real estate, had leased it for a term of 130 years at an annual rental of $61,000, and had, at the same time, amended its corporate organization so as to limit its powers to the sole purpose of holding the title to the lands leased, and of receiving and distributing among its stockholders the rentals that accrued under the lease, and the proceeds from any disposition of the land. This was the whole extent of its activity, and the amounts derived therefrom represented its entire income. In that case the court held that the corporation had practically gone out of business, and had disquaifiled itself from any activity in respect thereof, and therefore did not come within the scope of the act.

In the present case the corporation has not disqualified itself from business activity. It maintains a considerable force in active employment, and, entirely apart from the receipts from the railroad lease, so deposits and invests its funds as to create, in these days of low interest upon good investments, an annual income of over $24,000, as appears by its return. The amount derived from investments depends upon the exercise of judgment and the efficiency of management. If business includes everything that occupies the time, attention, and labor of men for profit, it seems to me that these facts show that the Minehill Company is carrying on business in the present instance.

I am unable to agree that a corporation whose officers and agents are engaged in its behalf in selecting banks in which to deposit large sums of money, in passing upon and choosing securities in which corporate funds are to be invested, and then in distributing the interest and profits accruing therefrom among

its stockholders, is not engaged in doing business in the sense that the corporation in the Zonne Case was not.

I think the present case is much nearer the ruling made by this court in the Corporation Tax Cases in the matter of the realty companies therein involved. Take, for instance, the Park Realty Company. That corporation was organized to work, develop, sell, and convey real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, etc. It appeared that at the time of the imposition of the tax the sole business or property owned by the Realty Company was the Hotel Leonori. It was leased for twenty-one years at an annual rental of $55,000. The corporation was engaged in no business, except the management and lease of that hotel property, and was in receipt of no other income than that derived from its rental, and had no assets other than that property and the income thereof. It was held to be doing business within the meaning of the act. The Minehill Company, it seems to me, is doing more and a greater variety of business than was attributed to the Park Realty Company as the basis of the assessment upon it. Others of the realty companies held taxable in the Corporation Tax Cases, it seems to me, were engaged in as little business activity as is the corporation herein involved.

With deference to the majority opinion, I think the Minehill Company, upon the facts here adduced, is engaged in business and ought to be held liable to the tax.

Mr. Justice *Hughes* and Mr. Justice *Lamar* concur in this dissent.

SOUTH CAROLINA SUPREME COURT.

D. W. ALDERMAN, Appt., v. L. L. WELLS, County Treasurer, Respt.

[85 S. C. 507, 67 S. E. 781; 21 Ann. Cas. 193, 27 L.R.A.(N.S.) 864, with note.]

Tax — income — graduation — validity.

1. A graduated income tax which exempts incomes under a specified

amount, and increases the tax as the income reaches stated amounts above that sum, does not deny taxpayers the equal protection of the laws, or deprive them of their property without due process of law.

Same — Constitution — construction.

2. A constitutional provision that the rate of taxation shall be equal and uniform does not apply to taxes on incomes, where another provision states that the legislature may provide for a graduated tax on incomes.

Same — corporation — income — double.

3. That an income is derived from corporate dividends, and that the corporation pays taxes on its property and franchises, does not render a tax on such income double, so as to be invalid.

Same — annual assessment — validity.

4. A statute providing for an income tax which is to be a certain percentage of the amount of the incomes does not violate a constitutional provision that the general assembly shall levy an annual tax sufficient to pay the estimated expenses of the state for each year, where the levy of the income tax is to be made annually.

Statute — income tax — statement of object.

5. A statute providing for a tax on incomes sufficiently complies with a constitutional provision that no tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, where its title provides that the act is one to raise revenue for the support of the state government.

Tax — income — exception — validity.

6. A tax on incomes provided by the legislature is within the exception to another statute forbidding the collection of any other taxes than those provided by the statute, except such special tax as is authorized under an act of the general assembly.

(April 12, 1910.)

Appeal by plaintiff from a judgment of the Common Pleas Circuit Court for Clarendon County in defendant's favor in an action brought to recover back an income tax which had been paid under protest. Affirmed.

The facts are stated in the opinion.

Messrs. *Charlton DuRant* and *H. E. Davis,* for appellant:

The 14th Amendment imposes a limitation on the exercise of all the powers of the state, including that of taxation.

27 Am. & Eng. Enc. Law, 2d ed. p. 590.

Unequal taxes may not be imposed on property of the same kind, in the same situation, and used for the same purpose.

Railroad Tax Cases, 13 Fed. 722; Santa Clara County v.

Southern P. R. Co. 9 Sawy. 165, 18 Fed. 385, affirmed in 118 U. S. 394, 30 L. ed. 118, 6 Sup. Ct. Rep. 1132; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 41 L. ed. 666, 17 Sup. Ct. Rep. 255; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; Yick Wo v. Hopkins, 118 U. S. 356, 369, 30 L. ed. 220, 226, 6 Sup. Ct. Rep. 1064.

The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment; and in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground,—some difference which bears a just and proper relation to the attempted classification,—and is not a mere arbitrary selection.

Fraser v. McConway & T. Co. 82 Fed. 258; Juniata Limestone Co. v. Fagley, 187 Pa. 193, 42 L.R.A. 442, 67 Am. St. Rep. 579, 40 Atl. 977; Wanser v. Hoos, 60 N. J. L. 482, 64 Am. St. Rep. 600, 38 Atl. 449; Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard) 183 U. S. 79, 46 L. ed. 92, 22 Sup. Ct. Rep. 30; Johnson v. Goodyear Min. Co. 127 Cal. 4, 47 L.R.A. 338, 78 Am. St. Rep. 29, 59 Pac. 304; Re Pell, 171 N. Y. 48, 57 L.R.A. 540, 89 Am. St. Rep. 797, 63 N. E. 789.

The act denies the equal protection of the laws.

Raymond v. Chicago Union Traction Co. 207 U. S. 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 A. & E. Ann. Cas. 757; Cummings v. Merchants' Nat. Bank, 101 U. S. 153, 25 L. ed. 903; Pelton v. Commercial Nat. Bank, 101 U. S. 143, 25 L. ed. 901; New York v. Weaver, 100 U. S. 539, 25 L. ed. 705; State ex rel. Johnson v. Chicago, B. & Q. R. Co. 195 Mo. 228, 113 Am. St. Rep. 661, 93 S. W. 784; Laurens v. Anderson, 75 S. C. 62, 117 Am. St. Rep. 885, 55 S. E. 136, 9 A. & E. Ann. Cas. 1003; Standard Oil Co. v. Spartanburg, 66 S. C. 37, 44 S. E. 377.

The tax is not equal and uniform.

State v. Tucker, 56 S. C. 516, 35 S. E. 215; Re Page, 60 Kan. 842, 47 L.R.A. 68, 58 Pac. 478; Hamilton v. Wilson, 61 Kan. 511, 48 L.R.A. 238, 59 Pac. 1069; State Central R. Co. Prosecutor v. State Assessors, 48 N. J. L. 1, 57 Am. Rep. 516, 2 Atl. 789; State v. Ide, 35 Wash. 576, 67 L.R.A. 280, 102 Am. St. Rep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

Where tax boards intentionally assess property belonging to different persons, such as individuals and corporations, at different rates or by different systems of valuation, it amounts to a denial of the rule of uniformity and equality prescribed by the Constitution.

Cincinnati Southern R. Co. v. Guenther, 19 Fed. 398; Cummings v. Merchants' Nat. Bank; Pelton v. Commercial Nat. Bank; and People v. Weaver,—supra; Dundee Mortg. Trust Invest. Co. v. Parrish, 11 Sawy. 92, 24 Fed. 202; Taylor v. Louisville & N. R. Co. 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350; Railroad & Teleph. Cos. v. Board of Equalizers, 85 Fed. 302; State v. Columbia, 6 S. C. 1; Murph v. Landrum, 76 S. C. 21, 56 S. E. 850.

As to double taxation, see:—

San Francisco v. Mackey, 10 Sawy. 300, 21 Fed. 539, s. c. 22 Fed. 602; Detroit Citizens' Street R. Co. v. Detroit, 125 Mich. 673, 84 Am. St. Rep. 589, 85 N. W. 96, 86 N. W. 809; Brown v. Maryland, 12 Wheat. 419, 444, 6 L. ed. 678, 687; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022; Almy v. California, 24 How. 169, 16 L. ed. 644; Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 7 Sup. Ct. Rep. 1118; Chicago v. Collins, 175 Ill. 445, 49 L.R.A. 408, 67 Am. St. Rep. 224, 51 N. E. 907; 27 Am. & Eng. Enc. Law, pp. 607–609.

The tax is invalid, because the statute exempts incomes under $2,500 from the payment of such tax, and thereby creates an unlawful discrimination.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455; Parkersburg v. Brown, 106 U. S. 487, 27 L. ed. 238, 1 Sup. Ct. Rep. 442; Barbour v. Louisville Bd. of Trade, 82 Ky. 645; Lexington v. McQuillin, 9 Dana, 513, 35 Am. Dec. 159; Sutton v. Louisville, 5 Dana, 28; Cooley, Taxn. 2d ed. 215; 1 Hamilton's Works 1885 ed. 270.

The statute is unconstitutional for the reason that the greater part of plaintiff's income was derived from dividends from stock in corporations, and, as these corporations had previously paid all taxes required by the state laws, to compel payment by plain-

tiff would amount to unjust discrimination against stockholders of corporations.

San Francisco v. Mackey, 10 Sawy. 300, 21 Fed. 539.

A general tax is one imposed on all persons within the territorial limits, according to the value of their property, in consideration of the protection which the government affords alike to all.

Gould v. Baltimore, 59 Md. 378; Meier v. Kelly, 20 Or. 86, 25 Pac. 73; Illinois C. R. Co. v. Decatur, 147 U. S. 190, 37 L. ed. 132, 13 Sup. Ct. Rep. 293; Shurtleff v. Chicago, 190 Ill. 473, 60 N. E. 870; State ex rel. Donnelly v. Hobe, 106 Wis. 411, 82 N. W. 336.

Messrs. *J. Fraser Lyon*, Attorney General, and *J. H. Lesesne* for respondent.

Hydrick, J., delivered the opinion of the court:

The plaintiff paid his income tax for the year 1905, under protest, and brought this action to recover it back, under the provisions of § 413 of the Civil Code of 1902. He alleges that the act which authorized the levy and collection of the tax is unconstitutional because it denies to him the equal protection of the laws and due process of law, in that: (1) Incomes under $2,500 are not taxed, and incomes over said amount are taxed; this being an arbitrary and unreasonable classification, and not being founded on the said income supporting a family, or being used in any particular manner or by any class of persons. (2) That incomes less than $5,000 pay a tax of 1 per cent, and incomes from $10,000 to $15,000 pay a tax of 2½ per cent. (3) That said tax includes all natural persons, and excludes all corporations. (4) That nearly all of plaintiff's income for the year for which the said tax was assessed was derived from dividends received from stock in corporations chartered under the laws of the state of South Carolina, and the said corporations had been required to pay the franchise tax in the proportion to the amount of their capital stock, as required by the laws of the state of South Carolina, and, in addition, the said corporations had been taxed and required to pay taxes upon their property for usual state, county, and municipal purposes; and the same amounts to an unreasonable discrimination against and tax upon the stockholders of

corporations. (5) In that no tax is assessed against the increase in values of property during the year, or from property sold at greater than cost price, or for any increase in market values of stock, bonds, or other investments; this being an unreasonable and arbitrary classification of property for taxation. (6) In that no deduction is made for any interest or other like expenditures which reduce the net income, and are not exempt in said act as expenses of carrying on business. (7) In that no deduction is made for taxes or other assessments paid the government; the said income tax act thereby being a tax on other taxes, and subjecting some property to double and treble taxation. (8) In that no deduction is allowed for losses, without regard to the nature or cause of same. He also alleges that it violates §§ 2 and 3, art. 10, of the Constitution, and that it was repealed by § 5, supply act 1905 (act February 18, 1905 [24 Stat. at L. p. 993]).

To a proper understanding of the questions involved, it will be necessary to set out the first two sections of the act, which is incorporated in §§ 325 to 331 of the Civil Code of 1902.

"Sec. 325. There shall be annually assessed, levied, and collected upon the gains, gross profits, and income received during the preceding calendar year by every citizen of this state, whether such gains, profits, or income be derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in this state or from any other source whatever, a tax of 1 per cent on the amount so derived over and above $2,500 and up to $5,000; 1½ per cent on $5,000 and over, up to $7,500; 2 per cent on $7,500 and over, up to $10,000; 2½ per cent on $10,000 and over, up to $15,000; 3 per cent on $15,000 and over; and a like tax shall be assessed, levied, and collected annually upon the gains, profits, and income from all property owned, and every business, trade, or profession carried on in this state by persons residing without this state, excepting such corporations as are hereinafter excepted: Provided, that in estimating the gains, profits, and income there shall not be included interest upon such bonds or securities of this state, or of the United States, the principal and interest of which are, by the law of their issue, exempt from taxation.

"Sec. 326. In computing incomes, the necessary expenses

actually incurred in carrying on any business, occupation, or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family, shall be deducted from the gross income or revenue; and the word 'income,' as used in this article, shall be deemed and taken to mean 'gross profits:' Provided, that no deduction shall be made or allowed for any amount paid out or contracted for permanent improvements or betterment made to increase the value of any property, or estate, or for the increase of capital, capital stock, or assets."

Section 327 defines the words "citizen" and "person," as used in the act, as including all natural persons, copartners, and members of any incorporated association, and as excluding all corporations chartered by the laws of the United States or of this or any other state. Section 328 provides that the taxes shall be levied and collected at the same time and in the same manner and by the same officers as other taxes, and that they shall be paid into the state treasury, as other general state taxes. Sections 329 and 330 provide for the time and manner of making returns, and penalties for failure to make returns, and for making wilfully fraudulent returns, and also that "the tax and the additions thereto as a penalty [are] to be assessed and collected in the manner provided for in the case of failure to make returns or lists of personal property." Section 331 is as follows: "In every respect not herein specified, the returns for and the levy and collection of the tax provided in this article shall be subject to all the provisions of law relative to the assessment and collection of taxes on personal property."

As one of the objections to the act is that it takes plaintiff's property "without due process of law," we state briefly, but substantially, the method of procedure in ordinary cases, required by the statutes of this state relative to the assessment and collection of taxes on personal property, which, by the terms of the income tax act, are made applicable to the assessment and collection of taxes thereunder. Between the 1st of January and the 20th of February in every year all persons are required to make a statement of return, on oath, to the county auditor of all such property, giving its value. The returns for each tax district are subsequently submitted to and passed upon by a board of assessors appointed for such district, who are sworn

to fairly and impartially assess the value of such property. If the board increases the aggregate valuation put upon his property by the taxpayer by as much as $100, notice must be given to the taxpayer, and he has the right of appeal to the county board of equalization, which is composed of the chairman of the boards of assessors for the several tax districts in the county, who are sworn fairly and impartially to discharge the duties imposed upon them by law. They hear all grievances and appeals from the valuations and assessments made by the boards of assessors, and may take testimony in regard to the same. If they raise the valuation of any property, the owner must be notified. If the taxpayer cannot get relief from the board of equalization, he has the right of appeal to the comptroller general, to whom all the testimony relative to each grievance must be forwarded, and he acts thereupon. After the assessments are fixed, the taxes, if not paid within the time prescribed by law, are collected by distress or by execution. If a taxpayer conceives that a tax assessed against him is unjust or illegal for any cause, he may pay the same under protest, and bring his action against the treasurer in the court of common pleas to recover it back. Under that provision of the law, this action was brought.

That provision of the 14th Amendment to the Constitution of the United States, which it is claimed this act violates, reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 5, art. 1, of the Constitution of this state is to the same effect, and in nearly the same words. The rights guaranteed by these constitutional provisions have been the subject of frequent judicial consideration. The courts have not attempted to give a definition of the meaning of the words "due process of law" so as to cover all possible cases, nor have they undertaken to say what would or would not, under all circumstances, satisfy the guaranty of "the equal protection of the laws," but have generally been content to proceed by the process of inclusion and exclusion in ascertaining their intent and meaning, and their application to the facts of each case as it is presented for decision, and with giving the reasons upon which the decision is rested.

The claim that the act deprives the plaintiff of his property without due process of law, and denies him the equal protection of the laws, raises questions under the Federal Constitution, upon which the decisions of the Supreme Court of the United States are authoritative and controlling. In solving these questions we must therefore be guided by the decisions of that court.

In the Kentucky R. Tax Cases, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Rep. 57, the court considered a statute of the state of Kentucky, which involved both these constitutional guaranties. Upon the question of what is due process of law in the matter of levying and collecting taxes, the court, by Mr. Justice Matthews, said: "It has, however, been repeatedly decided by this court that the proceedings to raise the public revenue by levying and collecting taxes are not necessarily judicial, and that 'due process of law,' as applied to that subject, does not imply or require the right to such notice and hearing as are considered to be essential to the validity of the proceedings and judgments of judicial tribunals. Notice by statute is generally the only notice given, and that has been held sufficient. 'In judging what is "due process of law," ' said Mr. Justice Bradley, in Davidson v. New Orleans, 96 U. S. 97, 107, 24 L. ed. 616, 620, 'respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and, if found to be suitable or admissible in the special case, it will be adjudged to be "due process of law," but if found to be arbitrary, oppressive, and unjust, it may be declared to be not "due process of law." ' In its application to proceedings for the levy and collection of taxes, it was said in McMillen v. Anderson, 95 U. S. 37, 42, 24 L. ed. 335, 336, that it 'is not and never has been, considered necessary to the validity of a tax * * * that the party charged should have been present or had an opportunity to be present, in some tribunal when he was assessed.' This language, it is true, was used in the decision of a case in reference to a license tax, where all the circumstances of its assessment were declared by statute, and nothing was intrusted to the discretion of public officers; but in the State R. Tax Cases, 92 U. S. 575, 610, 23 L. ed. 663, 672, where the ascertainment of the taxable value of railroads was the duty of a board, as in the present cases, whose

assessment was challenged for the reason that the proceeding was not 'due process of law' for want of notice and a hearing; it was said by Mr. Justice Miller, delivering the opinion of the court: 'This board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of anyone before it to assert a right or redress a wrong; and in the business of assessing taxes, this is all that can be reasonably asked.' " See also Cass Farm Co. v. Detroit, 181 U. S. 396, 45 L. ed. 914, 21 Sup. Ct. Rep. 644.

Upon the guaranty of the equal protection of the laws the same court, speaking through Mr. Justice Bradley, in Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533, said: "The provision in the 14th Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are safe in saying that the 14th Amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states whose object is to secure

equality of taxation, and which are usually accompanied with qualifications deemed material, but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, and which every state, in one form or another, deems it expedient to adopt."

In Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594, the constitutionality of a statute of the state of Illinois was affirmed. The statute imposed a graduated tax on legacies and inheritances, and divided the beneficiaries into three classes; the first and second being composed of lineal and collateral relations of the decedent, and the third being composed of more distant relatives and strangers. On the first class a tax of 1 per cent was imposed on all sums in excess of $2,000; on the second, 2 per cent on all sums in excess of $2,000; and on the third, 3 per cent on all sums over $500 and less than $10,000, increasing 1 per cent on each succeeding $10,000 up to $50,000, above which amount it was 6 per cent. The act was attacked on the ground that it denied to the plaintiff the equal protection of the laws. In disposing of the question, the court said: "What satisfies this equality [equal protection of the laws] has not been, and probably never can be, precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." The right of the legislature of the state to make reasonable classifications of persons and property for public purposes has been so often affirmed by the courts that it can no longer be questioned. If the classification is not arbitrary,—that is, if it bears reasonable relation to the purposes to be effected,—and if the constituents of each class are all treated alike, under similar circumstances and conditions, the rule of equality is satisfied.

It is contended by appellant that this act violates the provisions of § 1, art. 10, of the Constitution of this state, which requires the legislature to provide for a uniform and equal rate of assessment and taxation, and prescribe regulations to secure a just valuation for taxation for all property. The section,

however, has this important proviso: "That the general assembly may provide for a graduated tax on incomes." These provisions must be construed together, and by the proviso taxes on incomes are excepted from the requirement of a uniform and equal rate of assessment and taxation of all property; for it is impossible to conceive how a tax on incomes could be graduated without exempting some incomes, or without making the tax higher on some than on others. If the tax is so graded, those paying the lower tax are exempted to the extent of the difference. The determination of the amount of income that shall be wholly exempted, and the method and ratio of graduation, were left by the Constitution to the discretion of the legislature, and with the exercise of that discretion the courts have no concern. Necessarily the exercise of such a discretion must to some extent be arbitrary.

The next objection to the act is that it results in double taxation. The contention is that plaintiff's income was derived from dividends received upon his stock in corporations chartered and doing business under the laws of the state, and as these corporations had paid taxes on their property, and also on their franchises, a tax on plaintiff's income is double taxation. There is much room for discussion and difference of opinion as to what really amounts to double taxation. But the weight of authority and reason sustains the taxation of shares of stock in a corporation to the holder thereof, nothwithstanding the corporation has paid taxes on its property and also on its franchises. The rents and profits derived from real estate, and the products of the farm, may be taxed, though the land from which they are derived has also been taxed. The profits of a business may be taxed, though the property in the business, bought on credit, has been taxed to the owner, and the debt he owes therefor has been taxed to the creditor, and the property covered by mortgage may be taxed to the owner, and the mortgage thereon to the mortgagee. Cooley, Taxn. 3d ed. 387 et seq. These may be instances of double taxation in one sense, yet they are not within the rule of uniformity and equality prescribed by the Constitution, which forbids the taxation twice of the same property for the same purpose, while other property, under similar circumstances and conditions, is taxed only once. There is no constitutional inhibition against such taxation; and in the ab-

sence of constitutional restriction, the power of the legislature to tax is limited only by its own discretion and its responsibility to its constituents. It has been said the power to tax is an inherent right of sovereignty necessary to its existence, and limited only by its necessities. Judge Cooley, in his work on Taxation, at page 392, says: "We make out, therefore, no conclusive case against a tax when we show that it reaches twice the same property for the same purpose. This may have been intended, and, in many cases at least, is admissible."

Next, it is alleged that the act violates § 2, art. 10, of the Constitution of this state, which declares: "The general assembly shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year,"—in that it attemps to provide for taxation for more than one year, regardless of the estimated expenses of the state for years in which the same is to be collected. This is merely an assumption on the part of the appellant. By the terms of the statute the tax is levied annually, and is applied to the expense of the state in the year in which it is collected. We are bound to assume that, in estimating the annual expenses of the state, the legislature takes into consideration all the sources of income to the state, including the income tax, and fixes the general levy accordingly.

It is also contended that the act violates § 3, art. 10, of the Constitution, which provides: "No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, to which object the tax shall be applied." The title of the act (22 Stat. at L. p. 529) is: "An Act To Raise Revenue for the Support of the State Government by the Levy and Collection of a Tax on Income." That is certainly a distinct statement of the object to which the tax shall be applied.

The last point made is that the act was repealed by the supply act of 1905. Section 5 of that act requires the auditors and treasurers of the several counties to collect the taxes levied under and in pursuance of its provisions, and forbids their collecting any other tax whatsoever, except, amongst others, "such special tax or collection as is authorized under any act or joint resolution of the general assembly." It seems to us the exception clearly covers the income tax. But it is argued that this is not a special tax. We think it is. The word "special" is defined in the Standard Dictionary as "having in a peculiar and

distinguishing degree some characteristic or characteristics; out of the ordinary." It seems, from the numerous objections urged by plaintiff against this tax, that he at least considers it "out of the ordinary," and as "having in a peculiar and distinguishing degree some characteristics" of a very objectionable nature. But there are no express words of repeal in the supply act, and there is certainly no necessary implication of such an intention on the part of the legislature. On the contrary the same provision will be found in each supply act since the passage of the income tax act, and, notwithstanding that provision, the income tax act was incorporated in the Code of 1902, and was amended in 1905 by repealing the 8th section of the original act. This clearly shows that the legislature did not intend by that provision in the general supply act to repeal the income tax act.

Judgment affirmed.

SUPREME COURT OF WISCONSIN.

STATE EX REL. BOLENS v. FREAR, Secretary of State, et al.

WINDING et al. v. SAME.

[148 Wis. 456, 134 N. W. 673.]

1. The courts of Wisconsin can restrain public officers from enforcing an unconstitutional law which invades private or public rights.

2. The Supreme Court of Wisconsin has original jurisdiction of a suit for an injunction when a State officer is about to perform an official act materially affecting the interests of the people at large, which is contrary to law, or is imposed on him by the terms of an unconstitutional law—statute.

3. The Supreme Court of Wisconsin will not take original jurisdiction:

(1) In a case which although involving a question *publici juris* is local in its effect, unless the remedy in the lower courts is lacking or is absolutely inadequate.

(2) In a case involving a mere private interest or one whose primary purpose is to redress a private wrong.

4. A case will not be dismissed because there is a private interest involved with the public interest, provided the private interest be incidental merely, and the vindication of the public right be the primary purpose of the action.

5. An action involving a private as well as a public interest will not be dismissed merely because the private interest may drop out, provided the public and private interests be severable and the public interest still exists.

6. The Constitution has not given the State circuit court the power to use the writ of injunction as a prerogative jurisdictional writ, as it has been given to the Supreme Court, hence such circuit court has not the power in an action not brought by the Attorney-General, but on the relation of a private citizen only, to use the writ for prerogative purposes.

7. A taxpayer's action is to restrain the illegal use or squandering of municipal funds, being for the benefit of a limited class of citizens, and not to vindicate the rights of the whole people, is not within the original jurisdiction of the Supreme Court.

8. Where a State statute (Wis. Laws 1911, ch. 658) imposing an income tax, made an important change in the tax policy of the State, and was intended to supplant the taxation of personal property previously existing and to provide an income tax in lieu thereof, and such act was claimed to be unconstitutional, the claim involved the interests of the whole people of the State, and authorized the Supreme Court, at the instance of a private relator, to take original jurisdiction to restrain, until the constitutionality thereof has been determined, the officers of the State, charged with the enforcement of such law, from taking steps to enforce the same, and from expending State funds in such enforcement.

9. Constr. art. 13, § 9, provided that the rule of taxation shall be uniform, and taxes may be levied on such property as the legislature may prescribe. This was amended in 1908 by adding a provision that taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated and progressive. *Held*, that such amendment expressly authorized income taxation of a progressive character, in addition to taxation of property, and that taxation of income derived from property was not the same as taxation of the property itself, and that consequently Laws 1911, c. 658, was not unconstitutional in taxing real property, and also the rents derived therefrom as imposing double taxation.

10. The equality clause of the Fourteenth Amendment of the Federal Constitution did not impose upon the States an unbending rule of equal taxation, the states being authorized to make exemptions, levy different rates on different classes, tax such property and make such deductions as they choose, then provisions to that end proceeding

within reasonable limits and general usage being valid so long as they are within their own constitutions.

11. The Wisconsin statute (Laws 1911, ch. 658) in so far as it provided a progressive rate of taxation on incomes, according to the size of the income, was not unconstitutional as depriving taxpayers of the equal protection of the laws.

12. The partial invalidity of a separable provision of a State statute does not invalidate the entire act, where it does not appear that the Legislature would not have passed the act, without the invalid provision, had it been advised of its unconstitutionality.

13. The Wisconsin income tax act (Laws 1911, ch. 658), in so far as it permits the board of review to increase the assessments of a nonresident without notice, while requiring notice to be given to a resident, is not in violation of Constitution U. S. art. 4, § 2, providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.

14. The Wisconsin Constitution (Art. 13, § 9) provides that all county officers whose election or appointment is not provided for by the Constitution shall be elected by the electors or appointed by the proper county authorities, as the Legislature shall direct, that all city, town, and village officers whose election or appointment is not provided for, by the Constitution shall be elected by the electors of the proper municipality or appointed by such municipal authorities as the legislature may designate; that all other officers whose offices may thereafter be created by law shall be elected by the people, or appointed as the Legislature may direct. *Held*, that the office of assessor of incomes created by Laws 1911, ch. 638, was a new office within the fourth class, the election or appointment to which could be provided for in any way that the Legislature in its discretion, might direct, and hence that so much of the statute as provided for the appointment of such assessors by the State Tax Commission was not invalid as violating the constitutional guaranties of local self-government.

15. The Wisconsin statute (Laws 1911, ch. 658) providing for the imposition of an income tax was not unconstitutional as a delegation of the legislative power in so far as it authorized the State Tax Commission to appoint income tax assessors, and authorized the commission to fix their salaries.

16. There being a sufficient ground for classification between individuals and partnerships in the imposition of the tax on incomes by Wisconsin Laws of 1911, ch. 658, the statute was not invalid as an unjust discrimination against partnerships, although exemptions allowed to individuals are denied to partnerships therein.

17. Since the term "income" may be properly defined as that which comes in to a person as payment for labor, or services rendered in some office, or as gain from lands, business, the investment of capital, &c., so much of the Wisconsin Act (Laws 1911, ch. 658) imposing a tax on incomes, as provides that the estimated rental of residence properly

occupied by the owner, should be considered as income, is not invalid on the theory that, as it was not income in the strict sense of the term, it can not be made such by a legislative fiat.

18. There being a proper ground for distinction in the taxation of incomes between families living together and unmarried persons, or persons, though married, living separately, so much of the Wisconsin Act (Laws 1911, ch. 658), as provided that the income of a wife living with her husband should be added to the income of the husband, and the income of children under eighteen living with their parents should be added to that of the parent, or parents, and only one exemption should be allowed, was not objectionable as discriminatory.

19. The statute, although not adopted until July 15, 1911, providing for the imposition of the Wisconsin income tax, was not retroactive because it assessed incomes received during the year 1911, nor because it included the profits derived from the sale of property bought at any time within three years previously.

20. There being a reasonable basis for classification in the taxation of incomes between individuals and corporations, the Wisconsin statute (Laws 1911, ch. 658) was not invalid as creating an unjust discrimination, although it provided a rate of taxation for the incomes of corporations different from that prescribed for individuals.

21. A statute imposing an income tax is not invalid *in toto* because it does not specifically except national banks, nor the salaries of officers which are not taxable under the Constitution; and if national banks or public officers can not constitutionally be subjected to the tax, the law will be construed as not applying to them.

(Jan. 9, 1912.)

The first case was an original suit by the State, on relation of Harry W. Bolens, against James A. Frear, Secretary of State, and others, to restrain them, as state officers, from enforcing the income tax law (Wisconsin Laws 1911, c. 658). It was heard upon a demurrer to the complaint. The second case was an appeal from a judgment in an action in the circuit court by Arthur Winding and others against the same defendants, in which a demurrer to the complaint was sustained.

For the relator, Bolens, there was a brief by Messrs. *Carpenter & Poss,* and oral argument by Mr. *Benjamin Poss.*

For the appellants Winding and others there was a brief by Messrs. *Flanders, Bottum, Fawsett & Bottum,* attorneys, and a separate brief by Mr. *Geo. D. Van Dyke,* of counsel, and oral argument by Messrs. *J. G. Flanders, C. F. Fawsett,* and *Geo. D. Van Dyke.*

For the defendants and respondents there was a brief by the *Attorney General* and Mr. *Russell Jackson,* deputy attorney gen-

eral; a separate brief by Mr. *J. E. Dodge*, special counsel for the state; separate briefs by Mr. *Geo. G. Greene*, counsel; and oral argument by Mr. *Jackson*, Mr. *Dodge*, and Mr. *Greene*.

Briefs were also filed by the following attorneys as *amici curiæ*.

Messrs. *F. C. Winkler; Miller, Mack & Fairchild; David S. Wegg; Lines, Spooner, Ellis & Quarles;* and *Oscar M. Fritz.*

WINSLOW, Ch. J., delivered the opinion of the court:

These are actions in equity brought for the purpose of enjoining the secretary of state and other state officers, including the tax commission, from paying out any state moneys, or doing any other administrative acts, in the enforcement of the newly passed income tax law of this state, known as chapter 658, Laws of 1911, on the ground that said act is unconstitutional.

The Bolens action is an action sought to be brought within the original jurisdiction of this court, after refusal by the attorney general to bring it. This court, upon application for leave to bring the action upon the relation of Bolens (a taxpayer), granted such leave, but expressly provided in the order that the question whether such action was an action properly within the original jurisdiction of this court should be reserved and argued with the demurrer upon the merits. The Winding Case is an action originally brought in the circuit court for Dane county by various persons and corporations who claim that they will be injuriously affected in various different ways by the provisions of the law. A demurrer on the three grounds of want of jurisdiction, want of legal capacity to sue, and insufficiency of facts having been sustained by the circuit court, the plaintiffs appeal to this court, and all the cases were argued together; briefs being also filed by several members of the bar as *amici curiæ*.

The law which is attacked in these actions adds thirty sections to the statutes, and also makes very substantial changes by amendment and repeal in §§ 1036 and 1038 of the existing statutes, relating to the taxation of personal property. The first section of the law is numbered 1087m—1, and provides generally for the taxation of all incomes received during the year 1911, and annually thereafter.

Section 1087m—2 provides:

(1) That the term "person," as used in the act, shall include

"any individual, firm, copartnership, and every corporation, joint-stock company, or association organized for profit and having a capital stock represented by shares," unless otherwise stated.

(2) That the term "income" shall include:

a. All rent of real estate, including estimated rental of residence property occupied by the owner.

b. Interest on loans or evidences of debt of any kind.

c. Wages, salaries, or fees derived from services, provided that salaries of public officers are not to be included in those cases where the taxation thereof would be repugnant to the Constitution.

d. All dividends or profits from stock, or from the purchase and sale of any property acquired within three years previously, or from any business whatever.

e. Royalties derived from the possession or use of franchises or legalized privileges of any kind.

f. All other income from any source, except such as is exempted by the act.

(3) That "the tax shall be assessed, levied, and collected upon all income, not hereinafter exempted, received by every person residing within the state, and by every nonresident of the state upon such income as is derived from sources within the state or within its jurisdiction. So much of the income of any person residing within the state as is derived from rentals, stocks, bonds, securities, or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or without the state; provided that any person engaged in business within and without the state shall, with respect to income other than that derived from rentals, stocks, bonds, securities, or evidences of indebtedness, be taxed only upon that proportion of such income as is derived from business transacted and property located within the state, which shall be determined in the manner specified in subdivision (e) of § 1770b, as far as applicable."

Section 1087m—3 provides, in substance, for the following deductions by corporations and joint-stock companies:

a. Sums paid within the year for personal services of all

officers and employees actually employed in the production of the income.

b. Other ordinary and necessary expenses paid within the year in the maintenance and operation of its business and property, including reasonable depreciation of the property from which the income is derived. All bonds issued by a corporation shall be deemed an interest in the property and business of the corporation, and so much of the interest on the bonds as is represented by the ratio of the total property located and business transacted in the state to the whole property and business of the corporation as provided in subdivision 3 of 1087m—2 shall be subject to taxation at the same rate as the income, and shall be assessed to the bondholders under the general designation of "the bondholders of" the particular corporation on the property of the corporation prior to other liens, and, unless paid by the bondholders, shall be enforced against the corporation, which may deduct the amount of the tax from the next interest payment on the bonds.

c. Losses sustained during the year not compensated for by insurance or otherwise.

d. Sums paid within the year for taxes imposed by any other state upon the source from which the income taxed by this act is derived.

e. Dividends or income received during the year from stocks or interest in any firm, corporation, or joint-stock company, the income of which has been assessed under this act.

f. Interest received from bonds or securities exempt from taxation under United States laws.

By § 1087m—4 it is provided, in substance, that persons other than corporations and joint-stock companies shall be allowed the following deductions:

a. Ordinary and necessary expenses actually paid in carrying on the business from which the income is derived, including a reasonable allowance for depreciation in the property from which the income is derived.

b. Losses during the year not compensated by insurance or otherwise.

c. Dividends or incomes from stocks or interest in any firm

or corporation, the income of which has been assessed under this act.

d. Interest paid during the year on existing indebtedness.

e. Interest on bonds or securities exempt under United States laws.

f. Salaries received from the United States by United States officials.

g. Pensions received from the United States.

h. Taxes (other than inheritance taxes) paid during the year on the property or business from which the income is derived.

i. Devises, bequests, or inheritances received during the year upon which an inheritance tax has been paid.

j. Life insurance to the amount of $10,000 received by persons legally dependent on the decedent.

Section 1087m—5 provides in substance for the following exemptions:

(1) a. To an individual, $800.

b. To husband and wife, $1,200.

c. For each child under eighteen years, $200.

d. For each additional person legally and wholly dependent on the taxpayer for support, $200.

e. These exemptions do not apply to non-residents, nor to firms, corporations, or joint-stock companies. In computing such exemptions and the amounts of taxes payable under § 1087m—7, the income of a wife living with her husband shall be added to the husband's, and the income of each child living with its parent or parents shall be added to the parents' income.

(2) Income of mutual, savings, or loan and building associations, and of any religious, scientific, educational, benevolent, or other association not organized or conducted for pecuniary profit.

(3) Income from property and privileges by persons now required to pay taxes or license fees into the state treasury in lieu of taxes. Such persons shall continue to pay taxes and license fees as heretofore.

(4) Income received by the United States, the state, and all counties, cities, villages, school districts, or other political units of the state.

Section 1087m—6 provides, in substance, that the tax, after

making such deductions and exemptions, shall be computed at the following rates:

(1) a.	On	first $1,000	or	part thereof,	1%
b.	"	second	"	"	$1\frac{1}{4}$%
c.	"	third	"	"	$1\frac{1}{2}$%
d.	"	fourth	"	"	$1\frac{3}{4}$%
e.	"	fifth	"	"	2%
f.	"	sixth	"	"	$2\frac{1}{2}$%
g.	"	seventh	"	"	3%
h.	"	eighth	"	"	$3\frac{1}{2}$%
i.	"	ninth	"	"	4%
j.	"	tenth	"	"	$4\frac{1}{2}$%
k.	"	eleventh	"	"	5%
l.	"	twelfth	"	"	$5\frac{1}{2}$%
	On any sum exceeding $12,000,				6%

(2) Provided that the tax on corporations and joint-stock companies (after deductions) shall be computed as follows:

a. If the income equals 1 per cent or less of assessed value of property used in acquiring the income, the rate shall be $\frac{1}{2}$ of 1 per cent of such income.

b. If the income equals more than 1 but not more than 3 per cent of such value, 1 per cent of the income.

c. If more than 2, but not more than 3, per cent, $1\frac{1}{2}$ per cent of the income.

d. If more than 3, but not more than 4, per cent, 2 per cent of the income.

e. If more than 4, but not more than 5, per cent, $2\frac{1}{2}$ per cent of the income.

f. If more than 5, but not more than 6, per cent, 3 per cent of the income.

g. In like manner the tax shall increase at the rate of $\frac{1}{2}$ of 1 per cent for each additional 1 per cent or fraction thereof which the taxable income bears to the property employed in the acquisition of the income, until the rate of profits equals 12 per cent of property employed in the acquisition of the income, when such rate shall continue as a proportional rate of 6 per cent of such taxable income.

Section 1087m—7 provides as follows: "The legislature intends subs. 2 of § 1087m—6 of this act to be a separate part thereof, so that said subsection may fail or be declared invalid

without adversely affecting any other part of the act; provided that, in event of its failing or being declared invalid, the incomes of corporations, joint-stock companies, and associations shall be subject and shall be construed to have been subject to taxation at the rates specified in subs. 1 of § 1087m—6, and said incomes shall be reassessed by the Tax Commission and taxed for the years for which the rates provided in subs. 2 of § 1087m—6 shall have failed."

The next fourteen sections of the act are administrative purely. By their terms the enforcement of the act is placed in the hands of the state tax commission, which is authorized and required to divide the state into taxing districts, and appoint an assessor of incomes in each district. The manner in which incomes are to be assessed and the taxes are to be collected is fully provided for, but it is not necessary to insert the provisions here, as no question is raised upon the details of these provisions.

Section 1087m—22 provides, in substance, that the place at which the income tax shall be assessed, levied, and collected shall be determined as follows:

(1) Persons deriving income from within and without the state, or from two or more political subdivisions of the state, shall report the parts so separately derived in separate accounts in such form as the tax commission may prescribe.

(2) The entire taxable income of a resident of the state shall be combined for purpose of determining exemptions and rate of tax, but the taxes shall be paid to the several towns, cities, and villages in proportion to the income derived from each, counting the income derived from without the state as derived from the town or city of the taxpayer's residence.

(3) The income of nonresidents derived from sources within the state shall be separately assessed and taxed in the town, city, or village from which it is derived.

(4) All laws not in conflict with this act, regulating time, place, and manner of collecting unpaid personal property taxes, shall apply to the income tax.

Section 1087m—23 provides that the revenue derived from the income tax shall be divided—10 per cent to the state, 20 per cent to the county, and 70 per cent to the town, city, or village in which it is assessed, levied, and collected.

Section 1087m—25 abolishes the office of county supervisor of assessment on and after the first Monday in January, 1912, and provides that the county supervisor of incomes shall, after that date, perform all the duties imposed by law upon the county supervisor of assessment.

Section 1087m—26 provides that any person paying a tax on personal property during any year may present his receipt therefor, and have the same accepted by the tax collector to its full amount in payment of income tax during said year, and that any bank paying taxes upon the shares of its individual stockholders may present the receipt therefor, and have the same accepted in payment of taxes upon the income of the bank during that year.

Section 1087m—27 provides that nothing in the act shall affect in any way the taxes for the year 1911 or the collection or enforcement thereof.

By the amendment to § 1036 of the Statutes of 1898 there is taken out of the items of personal property subject to taxation "all debts due from solvent debtors, whether on account, note, contract, bond, mortgage, or other security, or whether such debts are due or to become due," also "moneys," and by the amendment to subdivision 10 of § 1038, Stat. 1898, the following property is made exempt from taxation: "All moneys, all debts due or to become due to any person, and all stocks and bonds not otherwise specially provided for."

By the concluding sections of the act certain other changes are made in exemptions from taxation, which have the effect of somewhat enlarging such exemptions, especially in the line of personal ornaments and belongings and agricultural implements, but the details of these changes are not necessary to be stated.

At the inception of the Bolens Case, the question of jurisdiction is sharply raised; and it is very strongly argued, especially in a brief filed by General F. C. Winkler, that this is not a case properly within the original jurisdiction of this court, as that jurisdiction has been defined and limited by the cases commencing with the Railroad Cases in 35 Wis. 425.

The argument, in brief, is that the action is nothing more nor less than a taxpayer's action; that such actions may properly be entertained in the case of illegal expenditures by cities,

counties, villages, or other municipalities, but cannot properly be brought against state officers, because, in effect, they are actions against the state, and the state cannot be sued without its consent. This objection might perhaps be summarily disposed of by a brief reference to the case of State ex rel. Raymer v. Cunningham, 82 Wis. 39, 51 N. W. 1133, where a case of similar character, brought on the relation of a taxpayer, was entertained and decided upon the merits against objection to the jurisdiction, and by further reference to the cases of State ex rel. Garrett v. Froehlich, 118 Wis. 129, at page 143, 61 L.R.A. 345, 99 Am. St. Rep. 985, 94 N. W. 50; State ex rel. Rosenhein v. Frear, 138 Wis. 173, 119 N. W. 894, and Re Filer & S. Co. 146 Wis. 629, 132 N. W. 584, in each of which cases the right to maintain similar actions in this court is either impliedly or expressly asserted.

We do not feel, however, that we ought to dispose of this very important question without thoroughly examining it for several quite persuasive reasons. Reference to the cases just cited will show that the question never has been discussed in any opinion. In the Raymer Case, which is the first of the series and which was a case brought on the relation of a taxpayer to enjoin the payment of money to the state superintendent of public instruction, under a law which violated an express constitutional prohibition, it was said, in substance, that it was held in the case of State ex rel. Atty. Gen. v. Cunningham, 81 Wis. 440, 15 L.R.A. 561, 51 N. W. 724, that such an action was within the original jurisdiction of this court, and would be entertained. It is very clear that the Cunningham Case was not such a case, and involved very different considerations. The Cunningham Case was an action brought on the relation of the attorney general to enjoin the secretary of state from giving election notices under an apportionment law which was held to deprive a very large number of the voters of the state of political rights guaranteed to them by the Constitution. This was held to be an invasion of the liberties of the people, and hence the case came clearly within the original jurisdiction of this court as laid down in the Railroad Cases. No question of the wrongful expenditure of state funds, nor of a taxpayer's right to invoke the original jurisdiction of this court to prevent such expenditure, was involved or mentioned in the case.

No discussion of the question appears in the other cases cited, so it seems clear that the court has not yet taken up and considered the question as an original one.

It has been spoken of as a very important question, and advisedly so spoken of. Laws which are framed to meet and correct some existing situation deemed by the legislature to be undesirable will generally, or at least frequently, involve the expenditure of some money in their enforcement. If, whenever such a law is passed, it is within the power of any taxpayer, however paltry his contribution to the public funds, to come into this court and invoke its original jurisdiction, and compel it to pass upon the validity of the law, it is not difficult to forecast the result. Every important law will be adverse to the interests of some taxpayers, and with such a principle established this court stands in great danger of becoming to all intents and purposes a third chamber of the legislature not named in the Constitution, but exercising a veto power over the other houses when invoked by any taxpayer. The power to pass upon the constitutionality of laws when the question arises in the course of ordinary litigation is a great power, one to be exercised with the greatest possible caution and wisdom, but the power to take up and pass upon a law involving the expenditure of any state funds as soon as it is passed at the suggestion of any taxpayer, and place a judicial veto upon its execution, is a still greater one. No higher power than this can well be conceived in a government such as ours, certainly no power will demand greater wisdom in its exercise, if it exist.

This court has unquestionably taken the position in a number of well-considered cases that the courts can and will restrain public officers from enforcing an unconstitutional law which invades private or public rights. State ex rel. Atty. Gen. v. Cunningham, 81 Wis. 440, 15 L.R.A. 561, 51 N. W. 724; State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.R.A. 145, 35 Am. St. Rep. 27, 53 N. W. 35; Bonnett v. Vallier, 136 Wis. 193, 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061, 116 N. W. 885; Wadhams Oil Co. v. Tracy, 141 Wis. 150, 123 N. W. 785, 18 Ann. Cas. 779. But this court has clearly recognized that this power is a delicate one, and to be used only with a wise discretion. It was said in the last case cited that "it will not do to make of the courts, by equitable interfer-

ence, a sort of a superior upper house to consider and pass, in general and particular as well, upon legislative enactments."

Concerning this power, Judge Dodge very rightly observes in his brief in the present case: "No higher power can be conceived than that of the judiciary to stay the action of the coordinate executive or legislature from an act or policy which the latter conscientiously believe to be constitutional and for public welfare. As the power is transcendent, its exercise must be with caution and moderation; albeit with courage. The frequency of the attempts by individuals to invoke this power of veto invites the anxious consideration of the wisdom and propriety of its exercise in each case."

The question now before us is whether this court has consciously and advisedly held that it is sufficient to call for the exercise of this extreme power that a taxpayer come into court and demand that the public treasury be protected from the expenditure of funds under a law concerning whose constitutionality there may be doubt.

The consideration of this question has prompted us to make a re-examination of the entire question of the original jurisdiction of this court, and to make an attempt to classify the significant decisions upon the subject, in the hope that thereby the scope and purpose of that jurisdiction, as the court has endeavored to define and limit it, may be better understood. The results of this re-examination are now to be stated as briefly as may be.

The constitutional grant of jurisdiction to the supreme court (§ 3, art. 7, Wis. Const.), after providing that it shall have appellate jurisdiction coextensive with the state, provides that it "shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same."

Since the decision of the Railroad Cases, 35 Wis. 425, it has been very well understood that by this section of the Constitution three distinct and independent grants of power or jurisdiction were made to this court, *viz.:* (1) The appellate power; (2) the power of superintending control over inferior courts; and (3) the original jurisdiction to be exercised by

means of the writs named in the section. We are only concerned here with the grant of original jurisdiction.

It will be at once noticed that this grant is practically unlimited in extent, except as it may be said to be limited by the scope of the writs named, and it is for this reason probably that (with the exception of the Blossom Case, 1 Wis. 317, to be referred to later) practically no attempt was made, prior to the decision in the Railroad Cases, to discuss the purpose or limits of the original jurisdiction. It was very frequently exercised, but plainly with no clear or logical idea of the purposes for which it was given to the court, unless possibly it may be said that there was the idea that the wrong to be redressed or prevented must be a wrong affecting the public, or some part of the public of a given locality or class, as distinguished from a wrong affecting individuals only.

Habeas corpus was so frequently used that the citation of the cases would be mere surplusage. Mandamus to compel official action by local or municipal officers was also very frequent. Thus the court entertained and decided upon the merits actions of mandamus to compel town assessors to reduce an assessment of personal property (State ex rel. Ward v. Assessors, 1 Wis. 345); to compel a circuit judge to hold court in a new county (State ex rel. Powers v. Larrabee, 1 Wis. 200); to compel county supervisors to strike property from the assessment roll (State ex rel. Beebe v. LaFayette County, 3 Wis. 816); to compel highway commissioners to act (State ex rel. Doxtador v. Bailey, 6 Wis. 291); to compel a school district clerk to make an official report to the town clerk (State ex rel. School Dist. v. Eaton, 11 Wis. 29); to compel county officers to locate their offices at a certain place as a means of testing the validity of county-seat elections (Atty. Gen. v. Fitzpatrick, 2 Wis. 542; State ex rel. Cothren v. Lean, 9 Wis. 279; State ex rel. Spaulding v. Elwood, 11 Wis. 17; State ex rel. Field v. Saxton, 11 Wis. 27; State ex rel. Gates v. Fetter, 12 Wis. 566); to compel town supervisors to audit damages allowed in laying out a highway (State ex rel. Van Vliet v. Wilson, 17 Wis. 687); to compel a city council to levy and collect a tax to pay a judgment or pay the expense of work done for the city (State ex rel. Soutter v. Madison, 15 Wis. 30; State ex rel. Christopher v. Portage, 12 Wis. 562, s. c. 14 Wis. 550; State ex rel. Carpen-

ter v. Beloit, 20 Wis. 79; State ex rel. Hasbrouck v. Milwaukee, 25 Wis. 122); to compel a county board to admit one duly elected as a member to sit and act as such (State ex rel. Gill v. Milwaukee County, 21 Wis. 443); to compel the mayor of a city to appoint certain officers (State ex rel. Atty. Gen. v. O'Neill, 24 Wis. 149); to compel a city treasurer to deliver certain books to the county clerk (State ex rel. Saar v. Hundhausen, 26 Wis. 432); to compel the transfer of prisoners from the Milwaukee jail to the house of correction (State ex rel. Kennedy v. Brunst, 26 Wis. 412, 7 Am. Rep. 84); to compel county supervisors to erect county buildings (State ex rel. Park v. Portage County, 24 Wis. 49); to compel county supervisors to provide certain officials with office rooms (State ex rel. Keenan v. Milwaukee County, 25 Wis. 339); to compel the Milwaukee Chamber of Commerce to restore a member to his rights and franchises as a member (State ex rel. Graham v. Milwaukee Chamber of Commerce, 20 Wis. 63), and doubtless other cases may be found.

It should be noted in this connection that in one case (State ex rel. Board of Education v. Haben, 22 Wis. 101) the court declined to entertain an action of mandamus against the treasurer of a city to compel him to pay over the school moneys in his hands to the school board, giving as a reason that the remedy in the circuit court was ample. Judge Cole there states that the practice of applying to the supreme court for writs of mandamus against local officers was becoming very common, and that, in view of the increasing duties of the court, and in pursuance of a rule of court then recently adopted, it would be held in the future that "wherever there is anything in the application which shows that it would be unavailing if made at the proper circuit, or where from the nature of the questions involved it would seem necessary and proper that the suit be commenced in the supreme court, jurisdiction will be entertained; otherwise it will not be. but parties will be required to make their application to the circuit court." This rule seems, however, to have been more honored in the breach than in the observance, as the cases just cited, which came up after the Haben Case. abundantly testify.

Quo warranto cases to try the title to public office, from that of governor down to school director, were very frequent. Thus

the writ was used to try the title to the office of governor in State ex rel. Bashford v. Barstow, 4 Wis. 567; of district attorney in Atty. Gen. ex rel. Carpenter v. Ely, 4 Wis. 420; of treasurer of a city in State ex rel. Leach v. Von Baumbach, 12 Wis. 310; of school director in State ex rel. Law v. Perkins, 13 Wis. 411; of circuit judge in State ex rel. Atty. Gen. v. Messmore, 14 Wis. 115; of sheriff in State ex rel. Peacock v. Orvis, 20 Wis. 235; of justice of the peace in State ex rel. Holden v. Tierney, 23 Wis. 430; of supervisor in State ex rel. Peck v. Riordan, 24 Wis. 484; of superintendent of the poor in State ex rel. Grundt v. Abert, 32 Wis. 403; of treasurer of an incorporated church benevolent association in State ex rel. Atty. Gen. v. Conklin, 34 Wis. 21; and there are numerous similar cases. As tending to explain the large number of these cases involving only small local offices, it should be noticed that by chapter 23 of the Session Laws of 1855 any person claiming to be entitled to hold "any public office" usurped by another was given the right to file in the supreme court an information in the nature of a quo warranto with or without the consent of the attorney general. While the Code of Pleading and Practice which was passed the following year (Laws 1866, chap. 120) entirely revised the practice in such cases, and contains no such sweeping provision, still resort seems to have been had to the supreme court in practically all cases of disputed title to office until the decision in the Railroad Cases.

Quo warranto to forfeit corporate charters for abuse or nonuse of franchises was also brought in State v. Milwaukee Gaslight Co. 29 Wis. 454, 9 Am. Rep. 598, and in State v. West Wisconsin R. Co. 34 Wis. 197.

The foregoing citations by no means cover all of the cases in which the original jurisdiction was used prior to the Railroad Cases, but it is believed that they cover all that are of any significance, except the Blossom Case (which is to be soon considered), and it is also believed that they conclusively demonstrate that there was in the judicial mind during that period no serious thought that the original jurisdiction given to this court was intended to be or ought to be limited by excluding any particular class of cases therefrom, except probably cases involving mere individual wrongs, with which the public was in no manner concerned.

Relating to this subject, Judge Dixon might well say, as he did in his brief in the case of Atty. Gen. v. Eau Claire, 37 Wis. 400, at page 411: "It is not surprising that the court looked in vain to the bar for assistance in the argument of the Railway Cases, when we reflect that both court and bar had been wandering in utter darkness for a period of more than twenty-five years." It is very evident that Judge Dixon knew whereof he spoke when he wrote these words. During fifteen years of the twenty-five he had been the leader of the wanderers.

It is quite plain, we think, that, however valuable the cases which we have thus briefly reviewed may be as authorities on the general propositions of law involved in them (and many of them are very valuable in this respect), they have absolutely no value on the question of the extent of the original jurisdiction of the court, for that question was never discussed or considered in any of them, and they have been gathered together here for the simple purpose of demonstrating their worthlessness as precedents upon that question, and to prevent either bench or bar from placing reliance upon them so far as that question is concerned in the future.

The case of Atty. Gen. v. Blossom, 1 Wis. 317, has not been included in the foregoing list because in that case, which was the first case where the original jurisdiction was challenged, there was an illuminating discussion in the opinion of Justice Smith, not only of the existence of any original jurisdiction in this court, but also of the purposes which were intended to be accomplished by the exercise of that jurisdiction. After meeting the contention that the court had only appellate jurisdiction, and demonstrating that the armory of common-law writs with which the Constitution endowed the court in the last clause of the section quoted were original in their functions, and necessarily implied the exercise of original jurisdiction, he used these pregnant words, remarkable in their strength and wisdom now, and vastly more remarkable when it is reflected that they were written nearly sixty years ago: "And, why was original jurisdiction given to the supreme court, of these high prerogative writs? Because these are the very armor of sovereignty. Because they are designed for the very purpose of protecting the sovereignty and its ordained officers from invasion or intrusion, and also to nerve its arm to protect its citizens in their liber-

ties, and to guard its prerogatives and franchises against usurpation. The convention might well apprehend that it would never do to dissipate and scatter these elements of the state sovereignty among five, ten, twenty, or forty inferior tribunals, and wait their tardy progress through them to the supreme tribunal, upon whose decision must finally depend their efficacy. To preserve the liberties of the people, and to secure the rights of its citizens, the state must have the means of protecting itself." Here was clearly expressed the great idea that the original jurisdiction was given to this court in order that the state might use it to protect itself and its sovereignty and the liberties of the people at large.

Strange, indeed, it seems that this idea so forcibly expressed in 1853 should have been completely ignored and forgotten for more than twenty years thereafter, notwithstanding the fact that applications for the exercise of that jurisdiction were increasing in number year by year. When, however, in 1874, the state, through its chief law officer, essayed to use the original jurisdiction for the purpose of curbing the great railroad companies of the state and compelling them to obey an act fixing rates of carriage for freight and passengers, the question of the extent of the jurisdiction was again sharply brought to the mind of the court, and it was philosophically discussed by Chief Justice Ryan in words which have ever since that time been regarded as authoritatively determining the attitude of this court upon the question. They have been often quoted and applied since that time, and are very familiar. In brief the principle there decided was that, in order to put in motion the original jurisdiction of this court, the question must not only be *publici juris,—i. e.,* a question of public right,—but it must be a question "affecting the sovereignty of the state, its franchises, or prerogatives, or the liberties of its people." Atty. Gen. v. Chicago & N. W. R. Co. 35 Wis. 425.

In the case of Atty. Gen. v. Eau Claire, immediately following the Railroad Cases, 37 Wis. 400, where the attorney general invoked the original jurisdiction to restrain the alleged illegal obstruction of a navigable river flowing into the Mississippi, the same doctrine was announced and somewhat elaborated upon, especially with regard to the term *publici juris.* In this opinion it was said: "Of course, every question of mu-

nicipal taxation is *publici juris;* but it is equally so whether it be raised by a taxpayer, or by the municipality, or by the state. It is not enough to put in motion the original jurisdiction of this court that the question is *publici juris.* It should be a question *quod ad statum reipublicæ pertinet.* . . . And, though the question did not arise in this case, it is quite evident from all that has any bearing on it in Atty. Gen. v. Chicago & N. W. R. Co. that, to bring a case properly within the original jurisdiction of this court, it should involve in some way the general interest of the state at large. It is very true that the whole state has an interest in the good administration of every municipality; so it has in the well-doing of every citizen. Cases may arise, to apply the words of C. J. Stow, geographically local, political not local; local in conditions, but directly affecting the state at large. Cases may occur in which the good government of a public corporation, or the proper exercise of the franchise of a private corporation, or the security of an individual, may concern the prerogative of the state. The state lends the aid of its prerogative writs to public and private corporations and to citizens in all proper cases. But it would be straining and distorting the notion of prerogative jurisdiction to apply it to every case of personal, corporate, or local right, where a prerogative writ so happens to afford an appropriate remedy. To warrant the assertion of original jurisdiction here, the interest of the state should be primary and proximate, not indirect or remote, peculiar perhaps to some subdivision of the state, but affecting the state at large in some of its prerogatives, raising a contingency requiring the interposition of this court to preserve the prerogatives and franchises of the state, in its sovereign character; this court judging of the contingency in each case for itself. For all else, though raising questions *publici juris,* ordinary remedies and ordinary jurisdictions are adequate. And only when, for some peculiar cause, these are inadequate, will the original jurisdiction of this court be exercised for protection of merely private or merely local rights. * * * It was suggested that we should establish general rules governing our original jurisdiction. That would be too bold an undertaking to venture on. Rules will arise, as cases come here, far more safely and properly than they could be prescribed in advance. We can now only declare the views which

influence us in passing upon this motion. It is sufficient here to hold that proceedings to restrain municipal undertakings or municipal taxation in ordinary cases belong appropriately to the original jurisdiction of the circuit, and not of this court. These are questions *publici juris* as are title to local public office, performance of local official duty, use of local highways, maintenance of local public buildings, abuse of local power or franchise, and kindred local matters. But these are not generally questions directly involving the sovereign prerogative or the interest of the state at large, so as to call for the prerogative jurisdiction of this court. As a rule, no extraordinary jurisdiction is necessary or proper for them; the ordinary jurisdiction of the circuit court being ample. Practically it would be impossible to take jurisdiction of them all here; and we intend to assume jurisdiction of none of them which are not taken out of the rule by some exceptional cause. When they are governed by some peculiarity which brings them within the spirit and object of the original jurisdiction of this court, we will entertain them. Otherwise they will be left to the circuit courts. And this we understand to be the true spirit and order of the constitutional grant of jurisdiction." In this case also was laid down the general principle that, while jurisdiction would never be assumed to enforce a mere private right, still jurisdiction would not be refused because there might be a private relator in the case who possessed a private interest bound up with the public interest, if in fact there was the necessary public interest before defined; and that the court in rendering judgment in such a case would not ignore the private interest of the relator, but administer full relief; but, on the other hand, if the private right of a relator and the public right of the state met in the same litigation, the private right of the relator might entirely disappear, and the relator drop out, but the court would still proceed and vindicate the public right, if there be a public right separable and distinct from the private right. This doctrine was more fully elaborated and stated in State ex rel. Drake v. Doyle, 40 Wis. 175, 22 Am. Rep. 692, which will be referred to later in this opinion.

The Railroad Cases and the Eau Claire Case, taken together, harmoniously following and more fully developing the great idea first announced in general terms by Judge Smith in the

Blossom Case, may be truly said to have established the fundamental reason for the existence of the original jurisdiction of this court, and the limits within which, in view of that reason, the court would endeavor to confine its exercise. No attempt was made in either case to mark out or define in advance the particular questions or kinds of questions which would be considered as affecting the "sovereignty of the state, its franchises, or prerogatives, or the liberties of its people." Such an attempt would manifestly have been as unwise as it would have been futile. Human prescience is not equal to such a task. So the court wisely contended itself with announcing the general principle, leaving itself free to judge in each case whether the contingency which justified and required the use of the jurisdiction had arisen. Since the decision of those cases this court has faithfully endeavored to follow the general rules laid down in them. Numerous applications for the exercise of the original jurisdiction have been made, and of these many have been granted and some have been refused. The question of the application of the general rules aforesaid has arisen and been discussed and decided in a number of cases presenting widely different problems. Sufficient time has now elapsed so that it should be possible to draw from these decisions some general conclusions as to the limits of the jurisdiction as the court has administered it. If this can be done, it certainly ought to be helpful in the future administration of the jurisdiction, not because it will or can put up the bars so that no future case can be brought within the jurisdiction unless it has its prototype in the past, but because every discussion and ruling upon the question as a new case is presented should be helpful in developing some philosophical and orderly rules for the application of the general abstract principles laid down in the two cases last named to concrete cases as they arise in the future.

With this idea in mind, a brief review of the significant cases decided since the decisions in the Railroad Cases will now be undertaken, and an attempt wlll be made to classify them.

I. The most numerous cases probably are the habeas corpus cases, and they may well be first disposed of. The first of these cases where the question of the jurisdiction was discussed was the Pierce Case, 44 Wis. 411, where, in spite of the vigorous protest of Chief Justice Ryan, it was held that the state had

so vital an interest in the liberty of every one of its citizens that the question whether a citizen was unlawfully deprived of that liberty involved the interest of the public at large. The reasoning by which the unlawful imprisonment of a single citizen is held to involve the interests of the public at large, so as to justify the use of the original jurisdiction of the supreme court, may seem somewhat strained, but the decision has been followed without question in numerous cases since that time, and, furthermore, it is to be noticed that the legislation of the state from the earliest days of the state had provided for the issuance of the writ by any justice of the supreme court, and by chapter 45 of the Laws of 1864 had further provided that all applications for the writ on behalf of a person confined in the state prison must be made to the supreme court, or one of the justices thereof. This latter provision has remained upon the statute book ever since (§ 3409, Stat. Wis. 1898), and this court has held that it applies to applications made by persons confined upon conviction for felony in the Milwaukee House of Correction as well. State ex rel. Heiden v. Ryan, 99 Wis. 123, 74 N. W. 544. It does not seem necessary or useful to cite the numerous habeas corpus cases which have been entertained by this court since the Pierce Case.

II. Next may be considered the quo warranto cases, and of these we have found but five cases which seem of any significance; namely, State ex rel. Wood v. Baker, 38 Wis. 71; Atty. Gen. v. West Wisconsin R. Co. 36 Wis. 467; State ex rel. Atty. Gen. v. Milwaukee, L. S. & W. R. Co. 45 Wis. 579; State ex rel. Radl v. Shaughnessey, 86 Wis. 647, 57 N. W. 1105; Re Holland, 107 Wis. 178, 83 N. W. 319.

The first of these cases was brought to try the title to the office of county clerk, and it was held that contests concerning the title to county offices were not within the jurisdiction marked out for itself by the court in the Railroad Cases, but that because the title of the judge of the circuit court to the office of congressman depended on the same votes which were questioned in the case, and hence he could not with propriety sit. The case came within the exception suggested in the Eau Claire Case; namely, cases where the ordinary jurisdiction of the circuit is entirely inadequate. The evident meaning of this case is that contests over local offices will not be entertained

unless the situation be such that the remedies in local courts are absolutely inadequate. It may well be doubted whether such a case as the Wood Case would now be entertained, in view of the ease with which, under present laws, another judge can be at once called in to try a case where the circuit judge is disqualified or declines to sit. The second and third cases named were actions brought to forfeit corporate charters granted by the state to railroad companies because of breach of duty on the part of the companies. They unquestionably fall within the jurisdiction as defined in the Railroad Cases, for in such an action the state is suing to punish the abuse or misuse of franchises granted by it in its sovereign capacity. In this connection it is pertinent to note that the legislature, by §§ 3240 et seq. of the statutes (Rev. Stat. 1878 and Stat. 1898), has for many years provided for actions in the name of the state to vacate corporate charters, which may be brought either in the supreme or circuit court, as this court may direct. See State ex rel. Lederer v. International Invest. Co. 88 Wis. 512, 43 Am. St. Rep. 920, 60 N. W. 796. In the Shaughnessey Case it was sought to use the original jurisdiction of this court to try the title to the office of justice of the peace, and jurisdiction was declined on the ground that it was a local matter purely, which did not affect the state at large. For the same reason jurisdiction was declined in the Holland Case, in which it was sought to test the validity of the incorporation of a village.

III. Next may well be classed the two great cases of Atty. Gen. v. Chicago & N. W. R. Co. 35 Wis. 425, and Atty. Gen. v. Eau Claire, 37 Wis. 400, in the first of which the state sued to prevent the great public-service corporations of the state from systematically violating and defying laws regulating their rates in the interest of the whole people, which laws were in effect amendments to the corporate charters of the companies; and in the second of which the state sued to prevent a purpresture in one of the great navigable rivers of the state connecting with the Mississippi river, which the state is bound to keep open as a common highway to the people of this state and of the United States. Upon the same general ground this court later entertained an action on the relation of the attorney general to prevent the tearing up of a railroad; the idea being that a railroad operated under a franchise granted by the state is a state high-

way whose destruction affects the interests of the state at large. State ex rel. Atty. Gen. v. Frost, 113 Wis. 623, 88 N. W. 912, 89 N. W. 915. The great public interests involved in these cases are so apparent as to obviate the necessity of comment upon them. In the case of State v. St. Croix Boom Corp. 60 Wis. 565, 19 N. W. 396, however, the court declined jurisdiction of a case very similar to the Eau Claire Case, because the St. Croix river was a river on the boundary of the state, as to which the state was under no trust to keep it open.

IV. In the next class may be placed the cases where it has been sought, by mandamus or mandatory injunction, to compel a state officer to perform a ministerial duty. Under this head, the cases involving performance of important duties imposed on state officers by the general election laws form a striking group, the first of these cases being the case of State ex rel. McDill v. State Canvassers, 36 Wis. 498, where mandamus was sought to compel the state board of canvassers to declare a certain result from the returns of a congressional election, and the court deemed the case one wherein the original jurisdiction should be exercised, although the office in issue was in a sense local, because the circuit judge himself was the opposing candidate, and could not act judicially upon such a question, hence the remedy in the circuit court was utterly inadequate. It is instructive to note that after this decision, by chapter 231 of the Session Laws of 1880, the legislature passed an act regulating the procedure in mandamus cases brought in the supreme court against any board of canvassers to compel the delivery of a certificate of election to either of the offices of member of the legislature, congressman, or presidential elector; thus apparently giving the legislative sanction to the idea that controversies concerning the canvass of votes at general elections for either of such offices so far affected the prerogatives of the state, or the liberties of the people, or both, as to come fairly within the original jurisdiction of the court. The substance of this provision has ever since remained a part of the mandamus statute. Section 3452, Stat. Wis. 1898. Other cases where the original jurisdiction has been invoked to compel the performance of official duty imposed by general election laws are the cases of State ex rel. Kustermann v. State Canvassers, 145 Wis. 294, 130 N. W. 489; State ex rel. Cook v. Houser, 122 Wis. 534, 100 N. W. 964, State ex

rel. Bancroft v. Frear, 144 Wis. 79, 140 Am. St. Rep. 992, 128 N. W. 1068, and State ex rel. Rinder v. Goff, 129 Wis. 668, 9 L.R.A.(N.S.) 916, 109 N. W. 628. The first of these last-named actions was practically the same as the McDill Case, the second and third were cases involving the duty of the secretary of the state, under general election laws, to place the names of certain persons upon the official ballot as nominees of a great political party for state offices, and the Rinder Case was a very good example of the exceptional cases where, though the office in issue was purely local, jurisdiction was assumed because of the absolute inadequacy of the remedy in the lower courts, and the abstract question involved was a question affecting the interests of the entire public.

Another group of significant cases under the fourth head are the mandamus actions brought to compel payment of funds from the state treasury to the persons or corporations alleged to be entitled thereto by law. In this group fall State ex rel. Bell v. Harshaw, 76 Wis. 230, 45 N. W. 308, brought to compel the state treasury to pay over certain moneys in the state treasury to certain counties; State ex rel. New Richmond v. Davidson, 114 Wis. 563, 58 L.R.A. 739, 88 N. W. 596, 90 N. W. 1067, brought to compel the state treasurer to pay over to the city of New Richmond an appropriation made by the legislature on account of damages suffered by the city in a cyclone; State ex rel. Garrett v. Frochlich, 118 Wis. 129, 61 L.R.A. 345, 99 Am. St. Rep. 985, 94 N. W. 50, brought to compel auditing of claims against the state for the Keeley treatment of drunkards at private sanitariums; State ex rel. Buell v. Frear, 146 Wis. 291, 34 L.R.A.(N.S.) 480, 131 N. W. 832, brought to compel auditing of salaries of the civil service commission and its employees; and State ex rel. Bashford v. Frear, 138 Wis. 536, 120 N. W. 216, 16 Ann. Cas. 1019, brought to compel auditing of the salary of a justice of this court.

Under this head, also, naturally fall the cases involving the issuance or revocation of licenses and patents, and of these the case of State ex rel. Drake v. Doyle, 40 Wis. 175, 186, 22 Am. Rep. 692, is the most significant. Here mandamus was invoked against the secretary of state upon the mere relation of a private individual in order to compel that officer to revoke the license of a foreign insurance company, because it had com-

mitted an act which, under the state law, worked a forfeiture of its license. In this case the attorney general appeared for the secretary of state, and suggested that the relator's personal grievance had been settled. Nevertheless the action went on as the suit of the state to vindicate and preserve "the prerogatives of the state in its sovereign character," and a peremptory mandamus was awarded.

Other cases of this general nature are State ex rel. Anderson v. Timme, 60 Wis. 344, 18 N. W. 837, brought to compel the issuance of a patent by the commissioners of public lands; State ex rel. Abbot v. McFetridge, 64 Wis. 130, 24 N. W. 140, to compel issuance of a license to a railroad company to do business, on the allegation that it had fully paid the legal license fees; also, the case of State ex rel. Covenant Mut. Ben. Asso. v. Root, 83 Wis. 667, 19 L.R.A. 271, 54 N. W. 33, brought to compel the state insurance commissioner to issue a license to a foreign insurance company which had fully complied with the law. This last case, however, was directly overruled in the case of Re Court of Honor, 109 Wis. 625, 85 N. W. 497, where this court refused to entertain an exactly similar action, on the ground that the primary right sought to be vindicated was private, and the public right, if involved at all, was only incidentally affected, and hence the circuit court was the appropriate tribunal to pass on the question in the first instance. Whether this ruling does not in effect negative jurisdiction in the Timme and McFetridge Cases, just cited may be a question of some doubt, but it is not necessary to determine it here. The case of State ex rel. Guenther v. Miles, 52 Wis. 488, 9 N. W. 403, where the original jurisdiction was used on the relation of the state treasurer to compel a county treasurer to make an official return, is not significant, as the question of jurisdiction was not raised.

V. In the last class fall the cases where it is sought to restrain a state officer (and in exceptional cases a county officer) from committing an unlawful act which will affect the prerogatives of sovereignty of the state, or the liberties of the people. The most conspicuous examples in this class of cases are the so-called "Gerrymander Cases," State ex rel. Atty. Gen. v. Cunningham, 81 Wis. 440, 15 L.R.A. 561, 51 N. W. 724, and State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.R.A. 145,

35 Am. St. Rep. 27, 53 N. W. 35,—the first of which was brought by the attorney general himself, and the second by a private relator on leave of the court, after the attorney general had refused to act. In these cases it was sought to enjoin the secretary of state from carrying out the terms of an apportionment law, on the ground that the law violated the commands of the Constitution, and was void. Here, for the first time, this court held that it could and would, on the relation of a private citizen, prevent a state officer from enforcing an unconstitutional law which injuriously affected the liberties of the people as an unfair and unconstitutional division of the legislative election districts of the state must necessarily do. In neither of these cases was jurisdiction sustained, because of the alleged unlawful expenditure of public funds, nor because of the fact that the relator was a taxpayer, but in both the ground was that an injury to the people of the state was about to be committed by depriving many voters of their just and constitutional rights in the election of the legislative bodies of the state under the form of a law which violated the express command of the Constitution. The evident idea was that the relator was in no sense the plaintiff. Hs simply brought the matter to the attention of the court, and, when he had performed this function, he ceased to be of importance. The suit became from its inception the suit of the state to vindicate the liberties of its people generally.

Following these cases at a considerable distance in time, but practically identical in principle, are the so-called "Twenty per cent,—Cases,"—State ex rel. McGrael v. Phelps, 144 Wis. 1, 35 L.R.A.(N.S.) 353, 128 N. W. 1041, and State ex rel. Hanna v. Frear, 144 Wis. 58, 128 N. W. 1061,—where, on the relation of private individuals, state and county officers were sought to be enjoined from enforcing a law requiring that, in order to be represented on the official ballot, a political party must cast at the primary 20 per cent of its vote for governor at the last preceding general election. The ground taken was that this provision was an unreasonable, unconstitutional restriction or infringement on the freedom of the ballot, and hence it affected the liberties of the people. Although objection to the jurisdiction was formally taken in these cases, it was not pressed, it was not discussed, and the court simply said that it saw no reason why jurisdiction should not be exercised.

In this class, if anywhere, must naturally fall the case of State ex rel. Raymer v. Cunningham, 82 Wis. 39, 51 N. W. 1133, which has been previously cited, brought on the relation of a taxpayer to prevent the payment of salary to a state officer over and above the amount limited by the Constitution. As has been before said in this opinion, the jurisdiction in that case was sustained by brief reference to the first Gerrymander Case, which is quite plainly a different case. Unquestionably the real ground was that the legislature was by express command of the Constitution prohibited from paying to the state superintendent out of the state funds any sum exceeding $1,200 per annum. Hence the law attacked in that case, which directed payment of a greater sum every year, was absolutely void, and the state itself was entitled to the intervention of the extraordinary jurisdiction of this court to protect iself from unconstitutional and unlawful depletion of its treasury by its own officers.

In both the Rosenhein Case, 138 Wis. 173, 119 N. W. 894, and the Filer & S. Case, 146 Wis. 629, 132 N. W. 584, the applications to bring actions on the relation of taxpayers were denied, because it was considered in each case that no unlawful expenditure of funds by state officers was threatened, but in the first-named case it was expressly said, and in the second it was assumed, that, in order to prevent illegitimate expenditure of state funds, an equitable action on the initiative of a taxpayer, after refusal by the attorney general, would be properly within the original jurisdiction of this court. There are several other cases which have more or less bearing on the general question which will be briefly mentioned. In the case of Re Hartung, 98 Wis. 140, 73 N. W. 988, it was sought to use the original jurisdiction of this court by way of injunction to put an end to a public nuisance in the town of Wauwatosa, consisting of the depositing of garbage on the surface of land to the discomfort of a very large neighborhood; but it was held that such a wrong, though public, was not a wrong affecting the sovereignty, franchises, or prerogatives of the state, or the liberties of the people at large, and that the remedy was in the local courts. This seems to be an entirely logical application of the general principle laid down in the Railroad Cases that, even though a question be *publici juris,* it will not call for the

use of the original jurisdiction if it be merely local in its effect. The sequel to this case, which appears by reference to State ex rel. Hartung v. Milwaukee, 102 Wis. 509, 78 N. W. 756, is also instructive. After the decision in Re Hartung, supra, the relator went to the circuit court, and, after refusal by the attorney general, was allowed to bring an action in the circuit court in the name of the state to enjoin the further continuance of the alleged public nuisance. The case was tried on the merits and an injunction refused, and on appeal to this court it was held that the circuit court was not given the writ of injunction for prerogative purposes, as this court was, and that hence the action below was never in fact an action by the state, notwithstanding its title, but was an action by a private party.

In view of this last-named decision, the recent case of State ex rel. Van Alstine v. Frear, 142 Wis. 320, 125 N. W. 961, 20 Ann. Cas. 633, becomes interesting, if not important. This case was an action brought in the circuit court in the name of the state, after refusal to act by the attorney general, upon the relation of a taxpayer; the object being to enjoin the secretary of state and state treasurer from carrying out the provisions of the primary election law, and especially from auditing or paying claims or bills for expenses arising under the law, on the ground of unconstitutionality of the law. The jurisdiction of the circuit court in this case was not challenged by demurrer, nor was it raised or considered either in the lower court, or in this court, yet it seems quite manifest that it was a case where injunction was used in the circuit court for prerogative purposes contrary to the principle laid down in the case of State ex rel. Hartung Milwaukee, just cited. However, as the question of jurisdiction passed *sub silentio,* the case is not significant.

Before proceeding to draw general conclusions from these decisions as to the field of the original jurisdiction, so far as any field has been marked out by the decisions, it may be well, in order to avoid misapprehension, to notice the fact that the legislature by § 3200, stat. 1898, has consented that the state may be sued in the supreme court by any person having a just claim which has been disallowed by the legislature. Actions brought under this section are, of course, brought by virtue of the consent of the state, without which the sovereign itself can-

not be sued. Nothing said in this opinion is to be construed as having any bearing on this section or the actions brought under it.

The affirmative result of the significant cases since the Railroad Cases is, as it seems to us, that the original jurisdiction of this court may be rightly invoked when there is a showing made either that (1) a citizen is wrongfully deprived of his liberty; (2) a state office has been usurped; (3) a franchise grantable only by the state has been usurped, abused, or forfeited; (4) a law regulating public-service corporations in the interest of the people is systematically disobeyed and set at naught; (5) a navigable river, which the state is bound to keep open as a highway for all, is obstructed or encroached upon, or a public railroad built under a charter granted by the state is about to be destroyed; (6) a state officer declines to perform a ministerial duty, in the performance of which the people at large have a material interest; (7) a state officer is about to perform an official act materially affecting the interests of the people at large, which is contrary to law or imposed upon him by the terms of a law which violates constitutional provisions; or (8) the situation is such in a matter *publici juris* that the remedy in the lower courts is entirely lacking or absolutely inadequate, and hence jurisdiction must be taken or justice will be denied. It is not meant by this attempted classification that no cases which do not fall within one or the other of the classes can ever call for the exercise of the original jurisdiction, but simply that cases falling within these general classes have been held to be properly within the original jurisdiction.

In addition to these eight affirmative propositions, the decided cases justify the statement of several negative propositions which are also helpful upon the general question. These are: (1) A case, although involving a question *publici juris,* will not come within the jurisdiction if it be only local in its effect, subject only to the exception named in the eighth class. (2) A case involving a mere private interest, or one whose primary purpose is to redress a private wrong, will not be entertained. (3) A case will not be dismissed, however, because there is a private interest involved with the public interest, provided the private interest be incidental merely, and the vindication of the public right be the primary purpose of the action. (4)

An action involving a private as well as a public interest will not be dismissed merely because the private interest may drop out, provided the public and private interests be severable and the public interest still exists. (5) The Constitution has not given the circuit court the power to use the writ of injunction as a prerogative jurisdictional writ, as it has been given to the supreme court, hence the circuit court has not the power in an action not brought by the attorney general, but on the relation of a private citizen only, to use the writ for prerogative purposes.

It seems to us now that the real fundamental philosophy of the original jurisdiction and its use has not been at all times fully apprehended by the court, even since the elaborate discussion in the Railroad and Eau Claire Cases, but, after this review of the authorities, it seems quite simple, and it really comes down to a few propositions which, when thoroughly understood, solve many difficulties.

This transcendent jurisdiction is a jurisdiction reserved for the use of the state itself when it appears to be necessary to vindicate or protect its prerogatives or franchises, or the liberties of its people. The state uses it to punish or prevent wrongs to itself or to the whole people. The state is always the plaintiff, and the only plaintiff, whether the action be brought by the attorney general, or, against his consent, on the relation of a private individual under the permission and direction of the court. It is never the private relator's suit. He is a mere incident. He brings the public injury to the attention of the court, and the court, by virtue of the power granted by the Constitution, commands that the suit be brought by and for the state. The private relator may have a private interest which may be extinguished (if it be severable from the public interest), yet still the state's action proceeds to vindicate the public right. The fact that in many cases, as, for example, cases of unlawful imprisonment, the private wrong and the public wrong are so closely identified that the ending of the private wrong necessarily puts an end to the public wrong, makes no difference with the principle.

These propositions, if correct, and we believe they are, demonstrate very clearly that there can be no such thing as a taxpayer's action (as that action is known in the circuit courts)

brought in the supreme court within the original jurisdiction. The philosophy of the taxpayer's action in the circuit court is that the taxpayer is a member of a municipal corporation, who, by virtue of his contributions to the funds of the municipality, has an interest in its funds and property of the same general quality as the interest of a stockholder in the funds of a business corporation, and hence, when corporate officers are about to illegally use or squander its funds or property, he may appeal to a court of equity on behalf of himself and his fellow stockholders (*i. e.,* taxpayers) to conserve and protect the corporate interests and property from spoliation by its own officers.

The taxpayer himself is the actual party to the litigation, and represents not the whole public, nor the state, nor even all the inhabitants of his municipality, but a comparatively limited class; namely, the citizens who pay taxes. In short, he sues for a class.

No such thing is known in the exercise of the original jurisdiction of this court. In actions brought within that jurisdiction the state is the plaintiff, and sues to vindicate the rights of the whole people.

The Bolens Case cannot, therefore, be held to come within the original jurisdiction of this court, if it be a mere taxpayer's action.

This conclusion, however, by no means leads to the result that the original jurisdiction may not properly be used at the instance and upon the relation of a private individual to stay, by appropriate writ, the expenditure of the state's funds for purposes expressly or by necessary implication forbidden by the Constitution. Such use of funds by a state officer is certainly as much a breach of duty and an injury to the state as the refusal to pay out funds which have been lawfully appropriated, or the failure to obey the provisions of general election laws; but in such case the action is the action of the state as truly as if brought by the attorney general, not the action of the taxpaying relator.

If this be true, we can see no logical escape from the conclusion that, where state officials are about to spend the state's money in executing an unconstitutional law, the state may prevent the threatened misapplication of its funds by the same means. This seems to us the only logical basis upon which

the case of State ex rel. Raymer v. Cunningham, 82 Wis. 39, 59 N. W. 1133, can rest.

But it must be recognized that such a power is extreme. To arrest the hand of a state officer as he is about to carry out the command of the legislature is indeed a serious step, one not to be taken summarily, or without profound consideration. As the power is great, it should be exercised with a wisdom and discretion commensurate with its greatness. No trivial grounds should impel the court to permit its exercise. This court will certainly not feel obliged, in every case where there is a threatened expenditure of state funds under a law of doubtful constitutionality, to allow an action of this nature to be brought in the name of the state, but will feel entirely free to leave the question of constitutionality to be settled as it may arise in ordinary litigation. The defiance of express or implied constitutional commands may be so flagrant and patent as to make the exercise of this great power appear justifiable, if not absolutely necessary, and in such case it will be exercised courageously. This court will, however, judge of the exigency in each case as it arises, and will endeavor to guard the great power from being used in trifling cases or to accomplish ulterior purposes.

In the present case we go no further than to state these general principles. We do not find it necessary to decide whether the alleged illegal expenditure of funds alone presents a case of such exigency as to justify the use of the original jurisdiction of this court to prevent such expenditure. There are other and more important features in the present case which, in our judgment, present a proper case for the exercise of the original jurisdiction.

The law which is attacked here, if it be valid, makes a radical change in the present system of taxation over the whole state.

Since the days when Hampden refused to pay the ship money, unjust taxation has been deemed, by English speaking nations, at least, to vitally concern, if not to destroy, the liberties of the people. Such taxation has been deemed to justify armed resistance, and, if need be, revolution. Insistence upon it cost Charles I. his life and England an empire. If this law in its essential provisions violates constitutional provi-

sions, and hence is void, taxation under it is, of course, unjust, and the sums which may be collected under it are unlawfully collected. It makes in terms a very sweeping change in the methods of taxation in every taxing district of the state, and shifts the burdens of taxation so that many will pay more than under the old system, while many will pay less. If it should go into operation for a year or two and then be held unconstitutional in some actual case, the confusion created in the financial affairs of the state and of every municipality would unquestionably be great. We cannot but regard any serious question as to the constitutionality of such a law as a question seriously affecting the prerogatives of the state, as well as the liberties of the people; hence we conclude that the case presented is one justly calling for the exercise of the original jurisdiction of this court.

Many provisions of the law are attacked as offending against either the Federal or the state Constitutions. We shall only treat the contentions which might, from some point of view, be considered as going to the validity of the whole act. As to those minor provisions, which are properly to be regarded as matters of detail, we shall express no opinion. This is in accord with our well-established custom in cases of this nature. Wadhams Oil Co. v. Tracy, 141 Wis. 150, 123 N. W. 785, 18 Ann. Cas. 779; State ex rel. Buell v. Frear, 146 Wis. 291, 34 L.R.A.(N.S.) 480, 131 N. W. 832; Borgnis v. Falk Co. 147 Wis. 327, 37 L.R.A.(N.S.) 489, 133 N. W. 209, 2 N. C. C. A. 834. A few general observations may not be out of place before taking up for consideration the specific claims of unconstitutionality which are urged upon our attention.

The law in question, if valid, works a very important change in the general taxation policy of the state. Ever since the foundation of the state government it has been the policy of the state to levy its general taxes upon property, either real or personal, with the exception of the inheritance taxes and the license taxes first levied on railroads and latterly upon other public-service corporations. The Constitution of the state, though not forbidding excise taxation, as determined in the inheritance tax case (Nunnemacher v. State, 129 Wis. 190, 9 L.R.A.(N.S.) 121, 108 N. W. 627, 9 Ann. Cas. 711), contained only one brief section on the general subject of taxation; namely,

§ 1 of article 8, reading as follows: "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." Under this section property taxation has been the rule, with the exceptions just noted, until the passage of the present law. This law, however, is but the concrete embodiment of a popular sentiment which has been abroad for some time. The legislatures of 1905 and 1907 (Laws 1907, chap. 661) passed a resolution recommending the amendment of the section of the Constitution quoted, by the addition of the following words: "Taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated, and progressive and reasonable exemptions may be provided." This change was ratified by the people at the general election held in November, 1908, and thus was clearly expressed, by both legislature and people, the idea that some form of general taxation in addition to, or in place of, property taxation, might well be adopted. The attempt has now been made to carry out this idea, and we have the result before us in the present law. With the political or economic policy or expediency of the law, we have nothing to do. If it be within constitutional lines, it represents and embodies public policy, because it is enacted by that branch of the government which determines public policy.

It may be well to note, however, that income taxation is no new and untried experiment in the field of taxation. It has been in use in various forms, and generally with the progressive feature, by many of the civilized governments of the world for decades, which in some instances run into centuries. It has been used at various times by nearly or quite twenty of our own states, and is now in use in several of them. It was used for a brief period by the government of the United States, and is now in successful operation in practically all of the great nations of the civilized world, except the United States. The fundamental idea upon which its champions rest their argument in its favor is that taxation should logically be imposed according to ability to pay, rather than upon the mere possession of property, which for various reasons may produce no revenue to the owner.

It is argued that there should be as nearly as practicable equality of sacrifice among the various taxpayers, and that a

tax levied at a uniform or proportional rate can rarely, if ever, produce equality of sacrifice; that 1 per cent of a small income, which just suffices to support its owner, is a far larger relative contribution to the public treasury than 1 per cent of an income so large that it cannot be exhausted by its owner, except by means of lavish and extravagant expenditures.

We are not to be understood by these remarks to be advancing arguments in support of the policy or expediency of the law, but simply as showing that in passing the law the legislature is only adopting a scheme of taxation which has been approved for many years by many of the most enlightened governments of the world, and has the sanction of many thoughtful economists.

By the present law it is quite clear that personal property taxation for all practical purposes becomes a thing of the past. The specific exemptions of all money and credits and the great bulk of stocks and bonds, as well as of all farm machinery, tools, wearing apparel, and household furniture in actual use, regardless of value, goes far to eliminate taxation of personal property; while the provision that he who pays personal property taxes may have the amount so paid credited on his income tax for the year seems to put an end to any effective taxation of personal property. That taxation of such property has proven a practical failure will be admitted by all who have given any attention to the subject. Doubtless this was one of the main arguments in the legislative mind for the passage of the present act. By this act the legislature has, in substance, declared that the state's system of taxation shall be changed from a system of uniform taxation of property (which so far as personal property is concerned has proven a failure) to a system which shall be a combination of two ideas; namely, taxation of persons progressively, according to ability to pay, and taxation of real property uniformly, according to value.

We pass from these general observations to consideration of the specific grounds of unconstitutionality alleged.

I. It is first claimed with much earnestness and ability that the act violates the provisions of the 14th Amendment to the Federal Constitution. One of the contentions under this head is that the progressive features of the act are discriminatory, if not absolutely confiscatory. Another contention is that the

act provides for double taxation, and for both reasons it is claimed that it denies to citizens the "equal protection of the laws." It is said in support of this contention that the United States Supreme Court in the Pollock Case, 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, has held that taxation of income derived from land is in fact taxation of the land itself, hence that the act provides for double taxation; first, of the land in specie, and next, of the income therefrom. It seems that this claim may be very easily met. The question in the Pollock Case was whether the taxation of rentals of land was direct taxation within the meaning of that term as used in the Constitution of the United States; and it was held to be the same, in substance, as a tax on the land itself, and hence a direct tax. This may be admitted for the purposes of the case, but it does not appear to, in any way, decide the question here at issue, or even to be very persuasive. The question there was of the power of Congress under that clause of the Federal Constitution which forbids any direct Federal tax, except one levied in proportion to the population. The question here is primarily of the power of the legislature of Wisconsin under its Constitution to levy an income tax in addition to a real estate tax; and, secondarily, whether such a tax denies to anyone the equal protection of the laws.

The inapplicability of the rule of the Pollock Case to the case here presented seems so plain as to require little comment. There can be no doubt of the proposition that income taxation of a progressive character, in addition to taxation of property, is directly authorized by the Constitution of Wisconsin as amended in 1908. Words could hardly be plainer to express that idea than the words used. From them it clearly appears that taxation of property and taxation of incomes are recognized as two separate and distinct things in the state Constitution. Both may be levied, and lawfully levied, because the Constitution says so. However philosophical the argument may be that taxation of rents received from property is in effect taxation of the property itself, the people of Wisconsin have said that "property" means one thing, and "income" means another; in other words, that income taxation is not property taxation, as the words are used in the Constitution of Wisconsin.

That they may say so, and lawfully say so, there is no doubt,

unless some restriction in the Federal Constitution is thereby violated; and we are pointed to none, save the clause guaranteeing "equal protection of the laws." That this clause does not apply to the case seems very well settled by the language of the Supreme Court of the United States itself in the great case of Michigan C. R. Co. v. Powers, 201 U. S. 245, at pages 292, 293, 50 L. ed. 744, 761, 762, 26 Sup. Ct. Rep. 459, 462, where it is said: "There is no general supervision on the part of the nation over state taxation; and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the circuit court in this case (Michigan R. Tax Cases [C. C.] 138 Fed. 232): 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the 14th Amendment to the Constitution to prevent a state from changing its system of taxation in all proper and reasonable ways, nor to compel the states to adopt an ironclad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice.' " This doctrine has been stated and restated in many forms, but with substantially the same meaning in many Federal cases, beginning with the case of Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533, nearly all of which are cited in the Powers Case at the close of the clauses above quoted. It seems unnecessary to quote or descant upon them. The sum and substance of it is that the 14th Amendment never was intended to lay upon the states an unbending rule of equal taxation. The states may make exemptions, levy different rates upon different classes, tax such property as they choose, and make such deductions as they choose, and, so long as they obey their own Constitutions and proceed within reasonable limits and general usage, there is no power to say them nay.

With regard to the progressive feature, it is aptly said in Knowlton v. Moore, 178 U. S. 41, at page 109, 44 L. ed. 969, 996, 20 Sup. Ct. Rep. 747, 774, by the present chief justice,

that "taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authoritative thinkers and a number of economic writers contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative, and not judicial." No more need be said as to the progressive feature. Expressly permitted as it is by our own Constitution, and clearly not within the inhibitions of the 14th Amendment, the progressive feature is in no respect objectionable. It was suggested in the Knowlton Case, supra, that possibly the case might arise where exactions so arbitrary and confiscatory might be imposed under the guise of progressive taxation that the question would arise whether judicial power should not afford relief under inherent and fundamental principles of justice, but, as there is plainly no ground for such a contention here, there is no need of considering the question.

II. It is argued that the provisions which deny to nonresidents the exemptions which are allowed to residents, and which allow the board of review to increase the assessment of a nonresident without notice, while requiring notice to be given to a resident, violate § 2 of article 4 of the Federal Constitution, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The question as to the validity of the provision allowing exemptions to residents of the state and denying them to nonresidents is raised, and received some attention in the briefs, but was not mentioned in the oral arguments. We regard it as a question involved in considerable doubt, and one not necessary to be passed upon now.

It cannot be imagined for a moment that the legislature would have failed to pass the act had it not contained this provision, and we prefer to wait until the question is presented in a concrete case, at which time there will be opportunity to fully consider it after comprehensive briefs and arguments. It seems that the Supreme Court of the United States decided in Ward v. Maryland, 12 Wall. 418, at page 430, 20 L. ed. 449, 452, that one of the privileges and immunities protected by the section quoted is the right "to be exempt from any higher

taxes or excises than are imposed by the state upon its own citizens." Other decisions relied on upon the same side are Re Stanford, 126 Cal. 112, 45 L.R.A. 788, 58 Pac. 462, and Sprague v. Fletcher, 69 Vt. 69, 37 L.R.A. 840, 37 Atl. 239, and the cases cited in the latter case. On the other side reliance is placed on the analogy of the laws providing for exemptions from execution seizure, which confine their benefits to residents, and upon Travellers' Ins. Co. v. Connecticut, 185 U. S. 364, 46 L. ed 949, 22 Sup. Ct. Rep. 673.

So far as the provision allowing the increasing of an assessment against a nonresident without notice is concerned, this would seem to be almost a necessity if power to increase the assessment of a nonresident is to be given to the board at all, otherwise the nonresident would only need to stay out of the state to prevent the possibility of an increase of his assessment. We do not consider that this latter provision affects in any way the privileges or immunities which are covered by the constitutional provision cited.

III. The claim is made that the law violates the constitutional guaranties of local self-government by placing the power of appointment of the various assessors of incomes in the state tax commission. These guaranties in substance are (1) that all county officers, except judicial officers, shall be chosen by the electors of the county every two years (Wis. Const. art. 6, § 4); (2) that all county officers whose election or appointment is not provided for by the Constitution itself shall be elected by the electors or appointed by the proper county authorities, as the legislature shall direct; (3) that all city, town, and village officers, whose election or appointment is not provided for by the Constitution, shall be elected by the electors of the proper municipality or appointed by such municipal authorities as the legislature shall designate; (4) that all other officers whose election or appointment is not provided for by the Constitution and all officers whose offices may thereafter be created by law shall be elected by the people, or appointed as the legislature may direct. Wis. Const. art. 13, § 9. These provisions have been quite fully considered and expounded by this court in several cases, and it seems unnecessary to add to the quite complete discussions of the subject to be found in O'Connor v. Fond du Lac, 109 Wis. 253, 53 L.R.A. 831, 85

N. W. 327, and State ex rel. Gubbins v. Anson, 132 Wis. 461, 112 N. W. 475. It is sufficient to say that we do not regard the office of assessor of incomes, as provided for by this act, as either a county, city, town, or village office; nor do we regard it as an office existing in substance at the time of the adoption of the Constitution, or essential to the existence or efficiency of either of said municipal divisions of the state, but rather an entirely new office within the fourth class above named, whose election or appointment may be provided for in any way that the legislature may in its discretion direct.

The further contention is made that it is a delegation of legislative power to vest in the state tax commission the power of appointing assessors of incomes and fixing their salaries. This objection is met and fully answered in State ex rel. Gubbins v. Anson, supra, and in Revisor's Case, 141 Wis. 592, 124 N. W. 670, 18 Ann. Cas. 1176.

IV. A number of contentions are made with regard to the exemption features of the act, and, first, it is said under this head that the allowance of exemptions to individuals and the denial of them to partnerships is unjust discrimination. The question depends, of course, upon whether there is any valid ground for classification. Is there such a substantial difference between the classes as to reasonably suggest or call for the propriety of different treatment? We are clearly of opinion that this question must be answered in the affirmative. A partnership ordinarily has certain distinct and well-known advantages in the transaction of business over the individual, arising from the fact that it allows a combination of capital, brains, and industry, and thus makes it possible to accomplish many things which an individual in the same business cannot accomplish. Further than this, however, there is another consideration. If the partner have individual income from other sources than the partnership business (as many do), his exemptions will be allowed to him out of the individual income, and thus, if he were also allowed exemptions from the partnership income, he would be allowed double exemptions. Altogether there seems to be ample reason for the classification. The exemptions themselves do not seem to be seriously attacked, nor do we see any reason why they should be. The most striking exemption is that of life insurance to the amount of $10,000

in favor of one legally dependent on the deceased; but, while this is somewhat large, we cannot say that it is unreasonable, nor that there is not ample ground for classifying legally dependent persons, and extending an exemption to them which is denied to others.

Attack is made upon the provision which directs that a taxpayer who has paid a personal property tax for the year shall be entitled to have the amount so paid credited upon his income tax. There is said to be no just ground for this distinction, but it seems quite clear to us that there is. In fact, it seems to be rather a means of equalizing the burden of the new form of taxation, than to be really an exemption. It was evidently done with the idea of accomplishing, without too violent a shock to taxing machinery, the substantial elimination of personal property taxation, and the substitution thereof of "ability" taxation. The practical result is that the taxpayer who has taxable personal property and the taxpayer who has none each pays taxes according to his ability as evidenced by his income.

In this connection, though not perhaps in its logical order, may be considered the objection to that provision of the act which directs that the estimated rental of residence property occupied by the owner shall be considered as income. It is said that this is not income, and that calling it income does not make it income. It may be conceded that things which are not in fact income cannot be made such by mere legislative fiat, yet it must also be conceded, we think, that income in its general sense need not necessarily be money. Clearly it must be money or that which is convertible into money. The Century Dictionary defines it as that which "comes in to a person as payment for labor or services rendered in some office, or as gain from lands, business, the investment of capital," etc. The clause was doubtless inserted in an effort to equalize the situation of two men each possessed of a house of equal rental value, one of whom rents his house to a tenant, while the other occupies his house himself. Under the clause in question, the two men with like property are placed upon an equal footing, and in no other way apparently can that be done. Under the English income tax laws, it has been held that where a man has a residence or right of residence which he can turn into money if he chooses, and he occupies the residence himself, the annual value of the rental

forms part of his income. Corke v. Fry, 32 Scott L. R. 341. We discover no objection to the provision in question.

Objection is also made to the provision that the income of a wife living with her husband shall be added to the income of the husband, and the income of each child under eighteen years of age living with its parent or parents shall be added to that of the parent or parents. This is another case of classification, and it is only justifiable in case there is some substantial difference of situation which suggests the advisability of difference of treatment. We think there clearly is such a difference in this: That experience has demonstrated that otherwise there will be many opportunities for fraud and evasion of the law, which the close relationship of husband and wife or parent and child makes possible, if not easy. The temptation to make colorable shifts and transfers of property in order to secure double or even triple exemptions, if there were not some provision of this kind in the law, would unquestionably be very great. There is no such temptation or opportunity in the case of the single man, or the man and wife who are living separately.

One further objection we overrule here without comment, for the reason that it seems very unsubstantial; namely, the objection that the law is retroactive and void, because assessed on incomes received during the entire year 1911, while it did not go into effect until July 15th of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously.

V. A strong argument is made attacking the validity of § 1087m—22, which provides, in substance, that the income of a resident derived from different political subdivisions of the state shall be combined for the purpose of determining the exemptions and the rate, while the income of a nonresident is to be separately assessed and taxed in each of the municipalities from which it is derived. A table is submitted showing that under this rule if A, a resident, derived $1,000 from each of thirteen different towns or cities, he will be required to pay a tax of $367, because his income is aggregated, and consequently becomes in large part subject to the higher rates, while if B, a nonresident, receives the same income from the same sources, he will only pay the smallest rate, *i. e.,* 1 per cent of each $1,000, amounting to only $130. This, it is said, is unjust discrimination against

the residents of the state, and deprives them of the privileges and immunities which are granted to the citizens of other states in violation of the Federal Constitution. This presents the question whether such a discrimination can be made between residents and nonresidents, only this time the discrimination seems to be against the resident and in favor of the nonresident. This question, also, we deem one not necessary to be decided now, and we intimate no opinion upon it. It does not seem that the case will frequently arise, but, if it does, it can be then treated. We do not regard it as in any respect important in considering the validity of the act as a whole.

VI. Much complaint is made of that part of § 1087m—6 which provides a different rate of taxation for the income of corporations from the rate prescribed for individuals, and this also is said to be unjust discrimination. Again, the question is whether there be substantial differences of situation between individuals and corporations which suggest and justify this difference in treatment, and again it seems that the answer must be, "Yes." The corporation is an artificial creation of the state, endowed with franchises and privileges of many kinds which the individual has not. It might be said with truth that the clause could be justified on the ground that it is an amendment to every corporate charter, which the legislature has the undoubted right to make, but it is not necessary to rely on that proposition. The corporate privileges, which are exclusively held by corporations, and the real differences between the situation of a corporation and an individual, among which may be mentioned the fact that the corporation never is obliged to pay an inheritance tax, plainly justify a difference of treatment in the levying of the income tax. Were the income tax a tax upon property, there could be no difference in rate, for taxation of property must still be on a uniform rule; but, as has been heretofore noted, it is not a tax upon property within the meaning of our Constitution.

VII. The minor objections that the law in terms includes all corporations, and does not specifically except national banks, nor name the officers whose salaries cannot be constitutionally taxed, are very easily disposed of. If national banks or any public officers cannot constitutionally be subjected to the tax, the law will be construed as not applying in such cases, just as

§ 1770b, Stat. (Laws 1907, chap. 562), although in general terms covering all business, has been held not to apply to interstate business.

VIII. We come now to certain serious objections which are made to the provisions of §§ 1087m—2, subd. 3 and 1087m—3 (b). The first of these sections provides, in substance, that a resident shall be taxed upon all of his income arising from rentals, stocks, bonds, securities, or evidences of debt, whether the same be derived from sources within or without the state, but that the nonresident shall only be taxed on income derived from sources within the state, or within its jurisdiction, but that any person doing business both within and without the state shall, as respects that part of his income not derived from rentals, stocks, bonds, and securities, be taxed only on that proportion thereof which is derived from business transacted and property located within the state, to be determined in the manner specified in subdivision "e" of § 1770b, Stat. (Laws 1907, chap. 562), as far as applicable. The general purpose of the section is quite evident, namely, to tax a resident upon his whole income and a non-resident only upon his income plainly derived from sources within the territorial jurisdiction of the state, and to provide that, where either person is engaged in a business interstate in its character, he shall only be taxed on that portion of the income derived from business transacted and property located within the state, according to the rule prescribed in § 1770b for determining that proportion of capital stock of a foreign corporation doing business in this state, which must be reported to the secretary of state. The rule so imported into the statute is an arbitrary rule, and need not be stated at length in the view we now take of our duty with regard to this contention.

Two fundamental objections are made to this section: First, that the state cannot tax the incomes of nonresidents, no matter from what source derived; and, second, that the attempt to tax a part of the profits derived from an interstate business, under the rule adopted, must necessarily result in a taxation of the receipts of interstate commerce, and hence a regulation thereof, which is in violation of that clause of the Federal Constitution which gives to Congress the power to regulate commerce between the states.

We shall decide neither of these questions now. If the section be open to either or both of these objections, or any others, we cannot regard that fact as fatal to the act. The legislature evidently intended to avoid both of the objections made. They had a difficult and delicate subject to deal with. Had they been authoritatively informed that they could not constitutionally tax a nonresident's income at all, and could not divide the income derived partially from state and partially from interstate business, we have no idea that they would on that account have abandoned their purpose to pass the law. Again, if they provided an improper rule for the division (conceding that a division can be made at all), there seems no reason why the rule may not be rejected and the proper rule, which will carry out the fundamental purpose of the provision, be used. In any event, we are fully satisfied that the rejection of any or all of the provisions objected to in this section cannot reasonably be held to invalidate the whole act.

When these questions are presented to us in a case actually arising, we shall be able to give them far more critical examination in the light of arguments and briefs directed exclusively to them. For the present, therefore, we leave the various objections to the validity of those parts of this section which are attacked, without answer.

For the same reasons we decline at the present time to pass upon the objections to the second section referred to under this head. That section provides generally that a proportion of the interest on corporate bonds (to be ascertained in the same manner as the proportionate taxable income is ascertained in the preceding section) shall be taxed against the bondholders and paid by the corporation, and deducted from the next interest payment on the bonds. Many serious objections on behalf of foreign bondholders are made to this provision, from the fundamental objection that there is no power to levy such a tax at all, to the minor objection that the rule for ascertaining the proportion is incorrect. As we do not deem it necessary to pass upon any of these objections, we need not make particular statement concerning them now. The subject will be entirely open for discussion when an actual case arises necessitating a decision upon this section.

We have reviewed all of the objections made to the law which we deem of sufficient importance to require specific mention or treatment. As a whole, we regard the law constitutional. If there be provisions which will not stand the test, they are not provisions of such a nature that they must be considered as the inducement to or as the compensation for the balance of the law. They may drop out, and leave the law intact in its fundamental and essential features.

As to the Winding Case commenced in the circuit court, a few words should be said. This was an action brought by a number of persons and corporations who alleged that they were taxpayers, and that they and their fellow taxpayers would be unlawfully taxed, and compelled to pay large sums under the alleged unconstitutional law, thus causing a multiplicity of suits; and praying that the officers of the state be enjoined from executing the law, and from paying any moneys out of the public treasury in its execution.

This seems to be a taxpayers' action pure and simple, brought in the circuit court to stay the hands of state officers from paying moneys out of the state treasury. We have already held in this opinion that no taxpayers' action can be maintained in the supreme court against the auditing or disbursing officers of the state. If such relief is sought, it must be in an action by the state itself, either brought by the attorney general, or, in case of his refusal, by authority of the court itself, upon the relation of a private citizen. It would seem, *a fortiori,* that no taxpayers' action should be entertained in the circuit court, where the purpose is to halt the auditing and disbursing officers of the state. We regard this as the better administration. It is enough that this court has the power to authorize such an action if the exigency demands. To divide up that power, and scatter it among the trial courts of the state, and allow every such court to judge of the exigency, might well lead to the bringing of many improvident actions. It is fitting that such an extreme power be vested in this court alone.

The result is that in the Bolens action the demurrer to the complaint must be sustained upon the merits, and judgment ordered dismissing the complaint, without costs; in the Winding

Case the order sustaining the demurrers must be affirmed, and the action remanded, with directions to dismiss the complaint for lack of jurisdiction.

It is so ordered.

KERWIN and BARNES, JJ., took no part in the decision of the question of jurisdiction.

MARSHALL, J. dissenting in part:

I concur in the decision and in the stated general character of this court's original jurisdiction, *viz.*, that it is wholly of a prerogative character, to be exercised in the name of the sovereign,—the state, standing for the people as an entirety.

I concur that prerogative judicial jurisdiction under the Constitution is reserved wholly to this court, and that an ordinary taxpayers' action to vindicate private rights is entirely outside of that field.

I do not concur in the view that the circuit courts have no jurisdiction of taxpayers' actions to enjoin illegal disbursements or waste of state money under the guise of an unconstitutional legislative enactment. The jurisdiction of such circuit courts is as boundless under the Constitution, as to all ordinary matters, as can be the violations of legal or equitable rights. It was lodged there by the people in the beginning. It cannot be given, taken away, or modified, legitimately, by any fiat of this court or in any way except in the manner pointed out in the fundamental law, without invading the field of usurpation.

The historical treatment of this court's administration of its original jurisdiction is not to be taken, I apprehend, as intended to indicate that its power is fenced about by mere precedents, or at all, except by the broad prerogative purposes of the grant. So far as the classification of precedents illustrates the general nature of the jurisdiction respecting what is and what is not within the field of prerogative purpose, it is very valuable, but should be regarded, I think, in that light only. Any situation calling for remedial activity which falls within the prerogative field falls within the original jurisdiction of this court, regardless of whether there is any precedent to fit the case; but whether such jurisdiction should be exercised or not in any given case must necessarily rest, more or less, in judicial discretion.

I do not concur in the restrictive character of the decision. I think the court should meet now and decide now, plainly and permanently, each of the important questions discussed by counsel, which, obviously, must be decided by this court sooner or later, and the earlier the better for all concerned. Any delay, I think, should be avoided, if possible, thus obviating the occurrence of a period of uncertainty characterized by expensive litigation and business disturbance attributable to failure by this court to grapple now, after the full argument had, efficiently with the matters referred to. Judicial progress along that line is the correct judicial policy. It is wholly within the court's power to so progress. It is the need of the times. The whole people of the state, as it were, are before this court in this case, invoking it to make a full decision. It is due to them to respond as effectually as practicable.

At some future time I will substitute for this brief memorandum an opinion in support of the suggestions made.

TIMLIN, J., dissenting in part:

Chapter 658, Laws of 1911, relating to the taxation of incomes and making an appropriation for salaries of officers and other expenses of executing and administering the statute, was enacted by the legislature, approved by the governor, and published July 15, 1911. The act went into effect as law from and after its passage and publication, and officers were appointed to administer this law, but no assessment or levy of tax had been made, and the time for enforcing the provisions of this act had not arrived when these suits were begun. I shall consider these suits separately, taking up first that begun in the circuit court by Arthur Winding and F. W. Gezelschap individually and as copartners, the Wisconsin Trust Company a corporation, several other natural persons, a national bank, and the Milwaukee Coke & Gas Company, a corporation. These plaintiffs, evidently selected because of diversity of relations to the act in question, affected differently by different sections of the act, but all desirous of escaping payment of the tax, hence interested in the question of the constitutionality of the statute, join in a taxpayers' suit in their own behalf and in behalf of all the other income taxpayers of the state, against three members of the state tax commission, the secretary of state, and the state treas-

urer. The cause of action alleged is that the act above referred to is null and void because in violation of the Constitution of the state of Wisconsin and of the Constitution of the United States, and that the members of the state tax commission will, unless restrained by injunction through their subordinate appointees acting under said statute, exact and collect large sums of money from many residents and citizens of Wisconsin, which collections will lead to a multiplicity of suits to recover back the moneys so collected, or to a multiplicity of suits by the state to collect the fines and penalties provided in and by said act to be enforced against those persons who refuse to comply with the act. On these grounds they pray for an injunction restraining the state tax commissioners and their subordinate administrative officers from attempting to enforce the act, and restraining the secretary of state, who is by the state Constitution auditor, from auditing, and the state treasurer, who is also a constitutional officer, from paying salaries, bills, or expenses of any kind incurred under or payable by the terms of the act in question. This act carries in it a legislative appropriation for such purpose. This is therefore a bill by taxpayers to enjoin the enforcement of a statute levying taxes upon incomes, on the ground that the statute is unconstitutional, which bill is sought to be upheld upon the equitable ground that it takes the place of a multiplicity of suits or actions, but, so far as the secretary of state and the state treasurer are concerned, it is a bill to restrain the payment of moneys out of the state treasury for the purpose of administering or enforcing a law claimed to be invalid. As to the latter defendants, who have no part in executing or enforcing the act except auditing and paying bills, salaries, and expenses under the legislative appropriation, the bill is maintainable only upon the ground that each individual taxpayer in the state has a proprietary interest cognizable in equity in the funds of the state treasury in analogy to the shareholder in a private corporation or the taxpayer in a municipal corporation. Land, Log & Lumber Co. v. McIntyre, 100 Wis. 245, 256, 69 Am. St. Rep. 915, 75 N. W. 964, op. and cases.

The circuit court sustained a demurrer to this complaint, and from that order the plaintiffs appealed to this court. This demurrer went expressly to the point that the circuit court had no jurisdiction of the action, and also to the point that the com-

plaint did not state facts sufficient to constitute a cause of action; so that both these questions are before us on this appeal. Generally speaking, the law does not give a private remedy for the redress of a public wrong. One damaged or threatened by an unlawful act which affected him only as it affected that section of the public holding the same legal relation to such act could not, at common law or in equity, maintain an action against the doer of such act. And it mattered not that his damages were greater. If they were of the same nature, and differed only in degree, the wrong was still a public wrong. The rule has been applied in a great variety of cases in this court. Enos v. Hamilton, 27 Wis. 256; Cohn v. Wausau Boom Co. 47 Wis. 314, 2 N. W. 546; Baier v. Schermerhorn, 96 Wis. 372, 71 N. W. 600; Stedman v. Berlin, 97 Wis. 505, 73 N. W. 57; Liermann v. Milwaukee, 132 Wis. 628, 13 L.R.A.(N.S.) 253, 113 N. W. 65; Linden Land Co. v. Milwaukee Electric R. & Light Co. 107 Wis. 493, 83 N. W. 851; Pedrick v. Ripon, 73 Wis. 622, 3 L.R.A. 269, 41 N. W. 705; Bell v. Platteville, 71 Wis. 139, 36 N. W. 831; Stone v. Oconomowoc, 71 Wis. 155, 36 N. W. 829; Gilkey v. Merrill, 67 Wis. 459, 30 N. W. 733, and cases cited; Sage v. Fifield, 68 Wis. 546, 32 N. W. 629; Harley v. Lindemann, 129 Wis. 514, 8 L.R.A.(N.S.) 124, 109 N. W. 570; Foster v. Rowe, 132 Wis. 268, 111 N. W. 688; Carstens v. Fond du Lac, 137 Wis. 465, 119 N. W. 117; Nast v. Eden, 89 Wis. 610, 62 N. W. 409.

It has been sometimes said by law writers and courts that this rule rested upon the consideration that, if one suit could be maintained in such case, each person affected might also bring suit, and thus the defendant be ruined by litigation. This consideration has special significance and force in a state where the law permits suits to be brought by private persons against administrative officers charged with the duty of enforcing the law. Few officers would attempt an efficient administration at such risk, and the ultimate result must be either injustice or inefficiency. But there is another reason for the rule, which lies deeper and upon a broader foundation of governmental policy. That is the policy which places the prosecution of public wrongs in the hands of the public prosecutors and out of the hands of those who may be actuated by private revenge or gain, malice, or political intrigue. Biemel v. State, 71 Wis. 444, 37 N. W.

244, 7 Am. Crim. Rep. 556. If the state, as a sovereign, is to have its proper and lawful recognition in our jurisprudence, it is, in the absence of statute, subject to no defense of laches, no limitation of time, and no liability to suit; and it must also be regarded as the repository of governmental policy and political discretion. When and how it will assert and enforce its sovereign prerogatives is often a political question, a matter of state policy; and to leave these great questions in the hands of every private litigant has a tendency to create confusion in jurisprudence, lack of wisdom in state policy, and contempt for authority. In the great case of Atty. Gen. v. Chicago, M. & St. P. R. Co. 35 Wis. 425, Chief Justice Ryan said at page 529: "Relief against public wrong is confined to informations by the attorney general." See further for illustration Saylor v. Pennsylvania Canal Co. 183 Pa. 167, 63 Am. St. Rep. 749, 38 Atl. 598. The victim of robbery, battery, or arson may have a private action for damages against the wrongdoer, suspended, according to some, until the pending public or state prosecution is at an end, and not concluded by the result of the public prosecution. But there there is coincident and contemporaneous with the public wrong a private wrong suffered by the victim, distinct and different from that suffered by any other member of the public. Where all are affected alike by the wrongful act, the language of the cases and many of the actual adjudications indicate that there is no private actionable wrong, not merely a lack of remedy. Cases infra and supra. An exception to these general rules was recognized in the case of taxpayers, first in this state, I think, in Peck v. School Dist. 21 Wis. 516, and this doctrine received the approval of the Supreme Court of the United States in Crampton v. Zabriskie, 101 U. S. 601, 25 L. ed. 1070. Since then the scope of the taxpayers' action so-called has been greatly extended by this court, and its decisions have not always been consistent.

In Peck v. School Dist. supra, the action was brought by certain taxpayers whose personal property had been levied upon and advertised for sale, to restrain local administrative officers from action taken contrary to statute and consequently outside of their jurisdiction, to the private injury of plaintiffs. Their remedy for this conceded private wrong would ordinarily be at law. But the contract which formed the basis for the tax was

found to be fraudulent, thus arousing the jurisdiction of equity, and the injunction against the enforcement of the tax sustained upon the ground that, the jurisdiction of equity having once rightfully attached, it should be made effectual for the purposes of complete relief. The decision of the court was written by Chief Justice Dixon. When the question was presented about four years later in a suit by taxpayers, involving no recognized ground of equity jurisdiction, but showing the plaintiffs to be taxpayers threatened with the enforcement of an illegal tax, precisely as it is presented by the complaint in the instant case, except that there it was averred the local administrative officers acted without their statutory jurisdiction, while here it is averred that the legislature of the state acted without its constitutional jurisdiction, the same distinguished jurist, denying the injunction, said, among other things: "The general principle that equity possesses no power to revise, control, or correct the action of public political or executive officers or bodies is, of course, well understood. It never does so at the suit of a private person, except as incidental and subsidiary to the protection of some private right or the prevention of some private wrong, and then only when the case falls within some acknowledged and well-defined head of equity jurisprudence. It is upon this principle that bills to restrain the collection of a tax have in general been dismissed [citing cases]. But there are other reasons why equity will refuse its aid in a case like this, and which are most ably pointed out in the opinions in Doolittle v. Broome County, 18 N. Y. 155, and in Sparhawk v. Union Pass. R. Co. 54 Pa. 401. The grounds are too remote, intangible, and uncertain, and the public inconvenience which would ensue from exercise of the jurisdiction would be enormous. It would lie in the power of every taxpayer to arrest all proceedings on the part of the public officers and political bodies in the discharge of their official duties, and assuming to be the champion of the community, to challenge them in its behalf to meet him in the courts of justice to defend and establish the correctness of their proposed official acts, before proceeding to the performance of them. A pretense more inconsistent with the due execution of public trusts and the performance of official duties could hardly be imagined." Judd v. Fox Lake, 28 Wis. 583. This case has been cited and followed many times: In Gilkey

v. Merrill, 67 Wis. 459, 30 N. W. 733, wherein it was expressly adjudicated that an action will not lie in behalf of a taxpayer to set aside the taxes of a city or other municipality generally, Judd v. Fox Lake is cited to support the rule that there must be some distinct principle of equity jurisprudence under which the case is brought, other than the mere illegality of the general taxes and its necessary and usual consequences; in Pedrick v. Ripon, 73 Wis. 622, 3 L.R.A. 269, 41 N. W. 705, to the effect that the mere passage of a resolution and intent to enforce it are not sufficient to support a taxpayers' suit; in Sage v. Fifield, 68 Wis. 546, 32 N. W. 629, to the same effect; in Foster v. Rowe, 132 Wis. 268, 111 N. W. 688, to the effect that no action will lie by a taxpayer in his own behalf and in behalf of other taxpayers to restrain the levy and collection of the taxes of a municipality generally. See also Harley v. Lindemann, 129 Wis. 514, 8 L.R.A.(N.S.) 124, 109 N. W. 570. If the equitable ground of the prevention of a multiplicity of suits could be invoked to support such a taxpayers' action, for the reason that the collection of an invalid tax will breed a multitude of suits at law to recover back the taxes, or on the ground that it will require a multitude of suits or proceedings in the nature of suits by the state to collect the taxes, then manifestly the foregoing cases were incorrectly decided, for all invalid tax levies give rise to suits to recover back the taxes, and generally the nonpayment of taxes is followed by penalties of some kind. Such suits are also forbidden by the rule which prohibits the courts to entertain suits by a private citizen to vindicate a public right, or that which prohibits a court of equity from employing its preventive remedies so as to interfere in a wholesale way with the collection of the public revenues. But I think they were correctly decided upon either ground. See Bell v. Platteville, 71 Wis. 139, 36 N. W. 831, and reasons there given for refusing to entertain the taxpayers' suit; Stone v. Oconomowoc, 71 Wis. 155, 36 N. W. 829; Harley v. Lindemann, 129 Wis. 514, 8 L.R.A.(N.S.) 124, 109 N. W. 570; Carstens v. Fond du Lac, 137 Wis. 465, 119 N. W. 117. In the latter case the right of a taxpayer to sue in behalf of other taxpayers is denied where the plaintiff merely seeks to relieve his property of a tax which he claims to be void. In Giblin v. North Wisconsin Lumber Co. 131 Wis. 261, 120 Am. St. Rep. 1040, 111 N. W. 499, the cases

are cited which hold that a decree in a taxpayers' suit is binding upon all the taxpayers and citzens of the municipality concerned in the litigation. The taxpayers' suit, as both created and limited by judicial decisions in this state, has been productive of very beneficial results in preventing municipal maladministration, conserving municipal funds and property, and keeping fraudulent or erring municipal officers within their jurisdiction. But the fact that it has cured some ills does not prove it a panacea. It has its limitations, as above shown, founded upon sound policy even with respect to subordinate municipal officers. For stronger reasons, those limitations must be applied when the suit is state wide in its operation, and is, in effect, a suit against the state to prevent the entire state levy and collection of a tax, on the averment that the law sought to be enforced is unconstitutional. The state as such has immunity from actions except where expressly authorized by statute, and here no such statute exists covering the instant case. The state officers in the execution of a law have a wider latitude of discretion than municipal officers. Taxpayers' suits against the latter are brought to vindicate some law, here to annul a statute. The taxpayer here attempts to represent a large constituency, and the arrest by injunction of all the taxes of the state surely implies a wider scope of power, larger interference with administrative officers, and multiplication of the serious consequences mentioned in the quotation from Judd v. Fox Lake, supra.

It seems apparent that, under the decisions of this court, the first action cannot be supported as a taxpayers' action based upon the avoidance of a multiplicity of actions at law or suits in equity. The other ground averred in support of the complaint is, as said, based upon the claim that each taxpayer of the state has an equitable proprietary interest in the funds in the state treasury or an interest of such a nature that equity will recognize it, and protect it by injunction against the constitutional fiscal officers of the state, to prevent them from paying out of such treasury funds for the execution or administration of an unconstitutional law under the rule applied to municipalities in Land, Log & Lumber Co. v. McIntyre, 100 Wis. 245, at page 256 op., 69 Am. St. Rep. 915, 75 N. W. 964; Cole's Estate, 102 Wis. 1, 72 Am. St. Rep. 854, 78 N. W. 402, and other

cases in this court. But the situations are not analogous. The state is not to be put upon the level of a private or of a municipal corporation. The former is the sovereign; the latter the subjects. The courts have jurisdiction in an action against a municipality as against a natural person. They have no jurisdiction of actions against the state except with the consent of the state expressed by the legislative branch of the government and approved by the executive. Unlike the Federal Constitution and the Constitutions of most of the states, the Constitution of this state creates and recognizes not three, but four, branches of government—legislative, executive, administrative, and judicial. Administration is logically, and in most cases legally, recognized as an exercise of the executive power. The heads of the great administrative departments of the United States government derive their power from the grant of executive power in the Federal Constitution, and their lawful acts are treated as acts of the chief executive; and in some instances an injunction against them to prevent the enforcement of law challenged as unconstitutional was put upon the same level as a like injunction against the President. Mississippi v. Johnson, 4 Wall. 475, 18 L. ed. 437; Georgia v. Stanton, 6 Wall. 50, 18 L. ed. 721, and cases in Rose's Notes. The administrative officers named in article 6 of our state Constitution are secretary of state, treasurer, and attorney general for the state, and sheriffs, coroners, registers of deeds, and district attorneys for the counties. Among the duties of the secretary of state prescribed by the Constitution is that "he shall be *ex officio* state auditor." There is no general grant of the whole administrative power to any one of or to all these officers, and doubtless this and § 4 of article 5, which requires of the governor that "he shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed," is sufficient authority for the legislature to impose upon the governor and upon subordinate administrative officers, like the state tax commissioners, all necessary administrative powers not by the Constitution vested in the administrative officers therein mentioned. There is also found in our state Constitution some express limitations upon the power of the legislature over the funds in the state treasury, and some restrictions of that power by necessary implication. Instance, § 18 of article 1, which

provides that no money shall be drawn from the treasury for the benefit of religious societies or religious or theological seminaries; also § 2, art. 8, which forbids an appropriation for the payment of any claim (except claims of the United States and judgments) not filed within six years after the claim accrued; and there are others. State ex rel. New Richmond v. Davidson, 114 Wis. 563, op. of Dodge, J., at page 580, 58 L.R.A. 739, 88 N. W. 596, 90 N. W. 1067. There are restrictions by necessary implication, as § 1, art. 10, which provides that the compensation of the superintendent of public instruction shall not exceed the sum of $1,200 annually. State ex rel. Raymer v. Cunningham, 82 Wis. 39, 50, 51 N. W. 1133. But these only accentuate the application, to all other treasury disbursements, of the rule fundamental in popular representative governments, that the popular branch of the state legislature, or the legislative branch of the government, shall control the public purse. *Expressio unius est exclusio alterius.* In no system is the judiciary the guardian of the public treasury except as the Constitution, by restrictions upon legislative power in this direction, may have so provided that a judicial controversy not involving political discretion may arise. The manner in which appropriations of money must be made is regulated, and there is a general provision, recognizing the authority of the legislative branch of the government over the public funds, to the effect that no money shall be paid out of the treasury except in pursuance of an appropriation made by law. There is in the instant case an appropriation made by law, but it is contended that this appropriation, being made for the purpose of administering or carrying into effect an unconstitutional law, is itself unconstitutional. What provision of the Constitution does it conflict with if we suppose the premises correct? The state legislature is not expected to find a grant of power to it in the state Constitution. Where there is no restriction, it possesses the power. Com. v. Plaisted, 148 Mass. 375, 2 L.R.A. 142, 12 Am. St. Rep. 566, 19 N. E. 224. There is no such restriction upon the power of the legislature over the public funds. On the contrary, it may well be within the duty, at least it is within the discretion, of the legislature that all laws, even invalid laws, be enforced, and thus brought to the test before the courts in the ancient well-understood and lawful way. But, in any

event, the courts have no authority to interfere by injunction, and thus forestall attempts to enforce the law. This because the taxpayer has no interest in the funds in the public treasury to restrain these officers, and because the court has no power to create such an interest in the taxpayer, and because the court does not possesses the power where no constitutional interdict intervenes to control the disbursements of public funds as against the legislative branch of the government. But of this hereafter.

It further seems to me obvious that a suit by a taxpayer against such fiscal officers of the state, based upon the claim that a statute is unconstitutional, is a suit by a private person against the state not going upon any apprehended destruction or confiscation of his property or clouding his title, as we say in legal phrase not *quia timet,* but ostensibly as champion of the public interests and in self-assumed protection of public funds, but really to avoid payment of the tax by arresting the power of the state in its attempt to execute the law by furnishing the funds for that purpose. That this is a suit against the state is settled by authority here and elsewhere. It falls within the rule of State ex rel. Drake v. Doyle, 40 Wis. 175, 22 Am. Rep. 692, sixth paragraph of opinion and the cases there selected for approval. Stephens v. Texas & P. R. Co. 100 Tex. 177, 97 S. W. 309; Lord & P. Chemical Co. v. Board of Agriculture, 111 N. C. 135, 15 S. E. 1032; State ex rel. Hart v. Burke, 33 La. Ann. 498; Poindexter v. Greenhow, 114 U. S. 270, 29 L. ed. 185, 5 Sup. Ct. Rep. 903, 962, and cases in Rose's Notes, and Fitts v. McGhee, 172 U. S. 516, 43 L. ed. 535, 19 Sup. Ct. Rep. 269, are in point, and other cases can be found. Quoting from the last cited case: "If because they were law officers of the state, a case could be made for the purpose of testing the constitutionality of the statute by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney general, based upon the theory that the former as the executive of the state was, in a general sense, charged with the execution of all its laws, and the latter, as attorney general, might represent the state in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of

questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the states of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons." See also Ex parte Young, 209 U. S. 157, 52 L. ed. 728, 13 L.R.A.(N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, et seq. op.

But there emerges here what is perhaps a larger question. To say that the courts have jurisdiction to review statutes at the suit of any taxpayer of the state who seeks to enjoin the payment of moneys out of the state treasury for the administration or enforcement of those statutes is to establish a general revisory jurisdiction in the courts over all legislation before any actual judicial or justicable controversy has otherwise arisen. I may safely say, that no statute is received with unanimous approval. A taxpayer may always be found. It is no answer to say that the court has a discretion as to when it will recognize this right of the taxpayer or issue its injunction. That only changes the principle which it is sought to ingraft upon our form of government, to the extent that we are to modify the statement of it by saying: "The courts have the power in their discretion to review all legislation," etc. To my mind it is an obvious fallacy to say that this power or this discretion extends only to the review of unconstitutional statutes. As well might one say that courts had jurisdiction to try only guilty persons charged with crime. The inquiry proposed is whether or not the act in question is unconstitutional, and it is to entertain such inquiry and decide it for or against the validity of the statute that the jurisdiction exists if it exist at all. To recognize a power resident in the courts by which that branch of the government could supervise legislation in this way would be to create a radical change in our plan of government as heretofore understood. This must be quite apparent to those who have extended their legal studies beyond the minutiæ of adjudged cases and the rules of private right, and have acquired some knowledge of the principles of government. All revenue measures and most other statutes involve some charge upon the public treasury for their administration. All acts of the legislature involve the expenditure from the state treasury of at least printing and publishing. Therefore all stat-

utes would at this preliminary stage be subject to judicial review. In reply to a suggestion of this kind from the bench, one of the learned counsel for plaintiffs suggested that this expense was so small that a suit would not be entertained because *de minimis non curat lex*. But this answer overlooked the cases of Mueller v. Eau Claire County, 108 Wis. 304, 84 N. W. 430, and Chippewa Bridge Co. v. Durand, 122 Wis. 85, 108 op. 106 Am. St. Rep. 931, 99 N. W. 603, wherein it was held that the court will not inquire into the amount or extent of the taxpayer's interest so long as he is a taxpayer. Besides, it overlooked the consideration that in a Republic founded upon the equality of its citizens before the law, it would be quite inconsistent with fundamentals to rest the jurisdiction to review legislative acts at this preliminary stage of their existence upon the wealth of the taxpayer who comes in to represent himself and the public. Nor can the amount of the charge which the law imposes on the state treasury affect this question, which is one of jurisdiction. No statute gives the taxpayer an interest in the funds in the state treasury. The courts must invent that species of property right if it is to have recognition in the courts. The courts also have considerable discretion in granting or withholding injunctions. This inevitably leads to the conclusion that the court is asked to create or recognize a right not given by common law or statute, and then exercise its discretion to issue an injunction to prevent threatened invasion of this right, and all for the purpose of making an occasion or an opportunity to review the constitutionality of a statute at the preliminary stage of its existence before its enforcement is attempted, and before any controversy otherwise justifiable has arisen. To do so would conflict with the notion of constitutional law and the powers of the judicial branch of the government with reference to declaring laws unconstitutional announced in Marbury v. Madison, 1 Cranch, 137, 2 L. ed. 60, and many cases since. It has been said that courts never declare a statute unconstitutional, but being confronted with a judicial question which it may not evade, and with a Constitution which commands one thing and a statute which commands the opposite, they reluctantly and unavoidably obey the paramount, not the subordinate, command. The result of the grave duty thus forced upon the court is unconstitutionality of the statute, because it is incapable of en-

forcement in the courts which speak last. But here we are asked not only to compare the statute with the Constitution, but to make the occasion for so doing, and to hold for the purpose of enabling us to do so by legislation, legal fiction, or unprecedented judicial decision, that every taxpayer has a proprietary interest in the funds in the state treasury. The controversy at this stage concerning the constitutionality of a statute is the same which was or might have been presented to the judiciary committees of the legislature, or to the legislature in session, the same as that waged before the governor to induce him to veto the act. It is in the nature of an appeal from the legislative and executive branches of the government to the judicial.

"The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts; and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by any one individual against another, there is presented a question involving the validity of any act of any legislature, state or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act." Chicago & G. T. R. Co. v. Wellman, 143 U. S. 339, 36 L. ed. 176, 12 Sup. Ct. Rep. 400. See also Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. ed. 773; Georgia v. Stanton, 6 Wall. 50, 18 L. ed. 721; Mississippi v. Johnson, 4 Wall. 475, 18 L. ed. 437. An injunction will not issue to restrain the execution of an unconstitutional law merely on the ground that it is unconstitutional. Thompson v. Canal Fund, 2 Abb. Pr. 248; Birmingham v. Cheetham, 19 Wash. 657, 54 Pac. 37; People ex rel. Alexander v. District Ct. 29 Colo. 182, 68 Pac. 242. I am convinced that the decision below was correct, and should be affirmed.

In the second suit a private citizen who is also a taxpayer seeks as relator to begin in this court an action by and in the name of the state against the secretary of state and state treasurer for the purpose of enjoining them from paying out funds from the state treasury for salaries and other expenses of administering this law, and also against the members of the state tax commission, enjoining the latter from exercising the duties and powers conferred upon them by the act in question, all upon the ground that this act is unconstitutional. As against the secretary of state and state treasurer, the ostensible purpose of the bill is to protect the state treasury. As against the state tax commission the real purpose of relator, to avoid paying income tax is disclosed. No steps have been taken to enforce the law, and the time for its enforcement has not arrived. Application was by relator made to the attorney general to begin and prosecute this suit. That official refused, and the relator on this showing with the usual averments of irreparable injury, etc., seeks to arouse the original jurisdiction of this court to entertain the suit to put his private counsel in the place of the attorney general to prosecute it, and to have the state at this stage of existence of the statute enjoin its own officers from collecting its own revenue upon the averments that the statute is unconstitutional. The constitutional grant of power to this court is that "the judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and justices of the peace." Art. 7, § 2. "The supreme court, except in cases otherwise provided in this Constitution, shall have appellate jurisdiction only which shall be coextensive with the state. * * * The supreme court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same." Art. 7, § 3. That portion of the last above quoted section giving power to issue the writs mentioned and to hear and determine the same was construed to confer upon this court original jurisdiction of all judicial controversies within the scope of and instituted by the issuance of such writs at common law, but it was said that the court would only exercise the power thus granted in controversies affecting the sovereignty of the state, its fran-

chises and prerogatives, or the liberties of its people. It was also decided that the writ of injunction found in this section, associated with the so-called prerogative writs, might also, for this reason be employed to assert the prerogatives of sovereignty. Cases collected in State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.R.A. 145, 35 Am. St. Rep. 27, 53 N. W. 35. Rules regulating the exercise of the original jurisdiction as distinguished from the appellate jurisdiction of this court, while appropriate and desirable to facilitate our work, are not fundamental. Power is derived from the Constitution, not from such rules which only operate to regulate the manner of its exercise. They merely serve to indicate when the parties litigant should approach this court in the first instance, and when reach this court by appeal or writ of error. There is, I think, a marked inconsistency between such cases as State ex rel. Drake v. Doyle, 40 Wis. 175, 22 Am. Rep. 692, Re Hartung, 98 Wis. 140, 73 N. W. 988, and State ex rel. Stengl v. Cary, 132 Wis. 501, 112 N. W. 428, and other cases found in our reports and referred to in the opinion written by Chief Justice Winslow herein. I am quite satisfied with the opinion of the court in this respect, but fear it will meet the usual fate of mere judicial warnings, and be again disregarded when a new exigency arises. The Constitution vests in this court only judicial power, thus excluding by implication political, administrative, and legislative power. The power to institute a suit by and in the name of the state cannot logically be said to be an exercise of judicial power. It is rather executive or administrative. The attorney general, district attorneys, the governor, and other officers possess this power, although they exercise no judicial power. It is only by historical associations of the words "judicial power," as distinguished from scientific definition, that the act of instituting a suit in court in the name of the state can be called an exercise of judicial power. Assuming it to be settled by precedent that the judicial power mentioned in our Constitution is that power formerly exercised by the court of King's bench and the chancery courts in England, still that power fell short of authorizing an attack, by suit, upon the acts of co-ordinate departments of government, by any writ, before any legal controversy had arisen by the attempted execution of such acts. How, then, did this court acquire jurisdiction to authorize the institution

of and then to entertain such a suit? Neither logical analysis of the term "judicial power," nor historical association, warrants the exercise. The restriction of suits against the state is quite impotent if every taxpayer of the state, while he cannot make the state a defendant in his suit, may nevertheless make the state a plaintiff in a civil action against the same state officers to fight his battle for him. If these state officers represent the state in an action against them to restrain them from enforcing the law, they occupy the same legal position, and make the same claims when this form of making the state plaintiff is complete. We can hardly say that the controversy has become a suit by the state against the state, for that would be absurd. We cannot liken the state to a trustee seeking the advice and direction of the court, for that presupposes a supervisory jurisdiction over the trust and in the court, and begs the question. We cannot find an analogy in the governments of those states like Massachusetts, where the governor or the legislature may call upon the court for an opinion in advance of enactment and of litigation, because there it is conceded that the courts in giving such opinion act not in a judicial, but in a political, capacity. Opinion of the Justices, 126 Mass. 557, 566. Turn this as we will, we are always confronted with the fact that, whether the taxpayer is plaintiff or the state plaintiff, the suit involves a claim on the part of this court of power to revise and review acts of the legislature with reference to their constitutionality, before any judicial controversy has arisen other than a controversy nursed into life and existence by this court for the purpose of such revision.

All that I have said and quoted with reference to the action in the name of the taxpayer on this point applies to this action. Of the two I would prefer the taxpayers' suit, because this is subject to the same weakness and also savors of subterfuge. Sovereignty is one and indivisible. But in the exercise of sovereign power all the great departments of government must concur. The manner of this concurrence is regulated by the division of governmental powers in the Constitution, and the limitations placed upon each department arising from this division or from express or necessarily implied restrictions found in the organic law. This sometimes impairs efficiency, but it promotes liberty. The most promptly efficient government is a despot-

ism. It is the wisdom of the spendthrift which sacrifices future advantage for immediate gratification. The statesmen who founded the American Republic understood these things, and made deliberate choice between a government of liberty and one of temporary and prompt efficiency. The result thus far has justified their judgment. In the prevailing plan of government the guardianship of the funds in the public treasury, except when otherwise specially provided, is committed to the legislative branch of the government, which is responsible to the people. The judicial branch of the government is to take no part in political questions. In consummation of the exercise of the sovereign power, it is to act last, and to act only when aroused by an actual judicial controversy. Until it comes before the court incidentally in such controversy, the question of the constitutionality of a statute is a political, not a judicial, question. There is therefore no jurisdiction resident in the courts, as there is in the legislature and the governor, to declare an act unconstitutional in advance of a judicial controversy which necessarily involves that question. The court, therefore, has no jurisdiction to create such controversy by authorizing what is, to my mind, a fictitious suit in behalf of the state against its own officers, where the ground for such a suit is that these officers are about to collect taxes under a general tax law. That is merely a statement of the rule that what cannot constitutionally be directly done cannot be done by indirection. The latter breaks down the American republican form of government as well as the former.

Examining from another viewpoint. In a case where a bounty was granted to manufacturers of sugar by Congress, and the disbursing officer of the treasury refused payment under the belief that the act of Congress was unconstitutional and the statute authorized a suit against the United States, an actual justiciable controversy thus arose. But even here and under a Constitution carrying delegated power, only the Supreme Court of the United States decided as set forth in the second paragraph of the syllabus: "It is within the constitutional power of Congress to determine whether claims upon the public treasury are founded upon moral and honorable obligations, and upon principles of right and justice; and having decided such questions in the affirmative, and having appropriated public money for

the payment of such claims, its decision can rarely, if ever, be the subject of review by the judicial branch of the government." United States v. Realty Co. 163 U. S. 427, 41 L. ed. 215, 16 Sup. Ct. Rep. 1120, approved in Allen v. Smith, 173 U. S 389, 43 L. ed. 741, 19 Sup. Ct. Rep. 446, cited in State ex rel. Garrett v. Froehlich, 118 Wis. 143, 61 L.R.A. 345, 99 Am. St. Rep. 985, 94 N. W. 50. If we compare the instant case with the above, we will find that here no justiciable controversy has arisen, but the court is asked to make one by authorizing a suit in the name of the state upon the petition of a taxpayer, and that here we are asked to decide in such suit that the legislature which possesses all power not forbidden had no power or discretion to make an appropriation of public moneys for the purpose of enforcing a statute passed by its legislature and approved by its executive. I think this court has no jurisdiction so to do. For the court to decide before its judicial power is aroused by a legal controversy is to assume a jurisdiction not given to it by law. I think the assumption of such jurisdiction changes the form of government as heretofore established and understood, and therefore we are justified in disregarding or overruling precedents in this court which might, by mere logical inference, seem to support this suit. I think we should have the courage to stop before taking this last step fraught with such consequences.

In this connection, I wish to mention the case of State ex rel. Rosenhein v. Frear, 138 Wis. 173, 119 N. W. 894, which was a motion for leave to bring suit in the name of the state. When that motion was presented, it will be remembered by those present that I protested vigorously from the bench against countenancing any such proceeding. I thought then, and I still think, that the suit there suggested was preposterous. If the legislature of Wisconsin had not been a body of rather feeble temper, it might not be entirely discreet for judicial officers to assert the right to launch and determine such a suit. But the motion was denied, and I regret to say that I gave no careful attention to the language of the opinion denying the motion, and neglected to dissent therefrom. I do not think either that the complaint states a cause of action in favor of the state and against its officers. The mere fact that taxes will be collected from a large number of its citizens by the state authorities for

the state creates no actionable wrong against the state. All general laws affect all the people of the state, and all police regulations curtail their rights or liberties to some extent. But this gives no right of action to the state. Neither can a general tax law, be it ever so new. The notion that the state has a right of action to test such laws is, to say the least, very novel. Nor does the fact that a law which appears on its statute books and is about to be enforced at some expense upon the state treasury do so. It is the legal and constitutional way in which to handle a law whether that law be valid or invalid. It is the proper mode of getting that law before the courts. It merely amounts to saying that the officers of the state are about to enforce the state statutes in such manner as to create justiciable controversies which will thus come before the court in the ancient established and orderly way. Surely such attempt is not actionable. If the statute is valid, it is their duty to enforce it; and it is, in any event, their duty to obey it until it is held to be invalid by the judicial branch of the government in a judicial controversy of which the latter branch has jurisdiction. If the legislature has discretion to recognize merely moral obligations and appropriate money for their payment, it surely may appropriate money for enforcing even a void act, and thus bringing it to the judicial test in an actual controversy. It may be that in the march of progress and the evolution of governments the change in the plan of our government created or confirmed by the decision herein is inevitable. But I distrust, and I think not through timidity, the steady progress of this court always in the direction of grasping more power. This will establish the judiciary as a political branch of the government, and displace it from that place of dignified impartiality which it has so long and so successfully filled. This extension of power is the progress which has always resulted in the wreck of human institutions. I have now made my protest against it in Re Revisor, 141 Wis. 592, 124 N. W. 670, 18 Ann. Cas. 1176, in State ex rel. Kustermann v. Board of Canvassers, 145 Wis. 294, 130 N. W. 489, in State ex rel. Rosenhein v. Frear, 138 Wis. 173, 119 N. W. 894, in Lawler v. Brennan, 150 Wis. 115, 134 N. W. 154, 136 N. W. 1058, and in the instant case, and so discharged what I conceive to be my duty. In any view of the case, even that taken in the majority opinion, it seems to me

the second action should be dismissed for want of jurisdiction as against the secretary of state and the state treasurer. But I consider that this court has, under the Constitution of this state, no jurisdiction to review the statute at this stage of its existence and in this way in either case. The assumption of the jurisdiction so to do cannot be justified upon the comparative futility of such review demonstrated by the result in this case.

Marshall, J., filed the following additional opinion March 15, 1912 (148 Wis. 542, 135 N. W. 164):

I fully determined to write, at length, in substitution for the above. On further reflection it seems to do so might give unwarranted dignity to some suggestions voiced in these cases which were, as is supposed, effectually foreclosed more than a century ago, and so are not, generally, and should not, efficiently, be deemed open for discussion.

After the uniform holdings here, through many important adjudications, that public money in the public treasury is a subject of trust for all the people for public purposes, and disbursable only pursuant to valid legislation, and that every taxpayer is a *cestui que trust*, having sufficient interest in preventing abuse of the trust to be recognized in the field of this court's prerogative jurisdiction as a relator in proceedings to set sovereign authority in motion by action in the name of the state for prevention or redress, any suggestions to the contrary, however well supported as an original proposition, might well have but a passing notice. The same is true of the question of whether an action against a state officer to prevent disbursement of public money in the enforcement of an invalid act of the legislature is against the state in any proper sense. It has been held over and over again, in terms or in effect, that such an action is to be regarded as against the person in his individual, not his official, capacity, and so not against the state,—so held very recently most significantly by the Supreme Court of the United States in Ex parte Young, 209 U. S. 123, 52 L. ed. 714, 13 L.R.A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, followed here in Bonnett v. Vallier, 136 Wis. 193, 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061, 116 N. W. 885.

It is essential to strictly maintain here the foregoing stated

principles. Only by so doing can this court fully perform its great function as the supreme efficient conservator, defender, and preserver of the inherent and guaranteed rights of the people. The court will not swerve from the proper course for which it was given independent status, "through fear, favor, affection, or hope of reward." I know every member of it is firm in that. No unreasonable impatience elsewhere, if such exists, will be permitted to interfere with the sturdy performance of constitutional duty here. While paying due deference to co-ordinate departments, it must expect that deference in return. There must be no hesitation through fear of censure or thought of tuning the judicial harpstrings to harmonize with temporary conditions, as we here advocated outside at times. In that there is no division of sentiment here.

I have too much respect for the law-making power to indulge the idea that there is any dominating thought there hostile to the willing performance of duty here to test enactments by constitutional restraints on all proper occasions, and put the stamp of judicial disapproval thereon when manifestly required, because of the enactment being evidently not law in fact, though law in form; and too much respect for the average legislative sentiment not to see through the vista of momentary impatience, —sometimes exhibited, at the failure of legislative effort,—to the considerate judgment of after-reflection, which may always be depended upon to approve and honor full performance of judicial duty, to appreciate that when there is a conflict between an act and the Constitution, as seems to the court created to view the matter, it must decide between them, and "as the Constitution is superior to any ordinary act of the legislature, the Constitution, and not the ordinary act, must govern the case to which they both apply." Marbury v. Madison, 1 Cranch, 137, 2 L. ed. 60. On the other hand, I have too high regard for the great trust reposed in the instrumentalities chosen for now to give vitality to the judicial function, to think that, if there be any considerable sentiment momentarily elsewhere inimical to full performance of duty here, it can exert efficient influence in that regard. Generally speaking, I apprehend the sentiment of the public is in favor of a prompt, thorough treatment of constitutional questions as they arise. The people want to know, and have a right to know, and legislative instrumentali-

ties desire to have them know, at the earliest practicable moment, just where they stand with reference to important new, far-reaching enactments.

The fundamental law, as it has been construed, and the function of this court as to applying the rule of the Constitution to legislative enactments and using its prerogative power against anyone assuming to act for the state who would otherwise interfere with guaranteed rights under the guise of an invalid enactment, must be maintained. No one can win enduring fame by failing to appreciate that and be ready to vigorously vindicate it.

The court, with practical unanimity, reached the conclusion that all constitutional questions presented and argued in the cases, in some of them, were within the court's power to consider and decide; but to what extent to respond was within its discretion. That left much to judicial propriety, convenience, exigency, and expediency, resulting in the court going only so far as was vital to the existence of the commission, with power to enforce the dominating features of the law. Not to go that far was thought would be well nigh, if not quite, abuse of discretion; not doubting competency to go further and decide all important questions so ably discussed. Obviously there is left a broad field for very much and very perplexing litigation, to the probable great prejudice of public and private welfare. The field so left untouched was as fully covered by eminent counsel as it is liable to ever be. The whole crop of legitimate controversies was fully ripe for the judicial harvest. All interests called loudly for the chosen instrumentality for the work to grapple with the proffered task. In my opinion, the waste of energy and expense attributable to failure to do so might well have been avoided. It was according to precedent to take the course adopted, I confess. But should precedent efficiently bar the wheels of progress toward a more full response to such an appeal for judicial determination? It seems not.

This court can well view with satisfaction its progressive course as to meeting judicial controversies squarely, casting aside the ancient method of dilatory, fencing, mere piecemeal decision, delaying the finality by technical dispositions, depleting to public and private resources, and disappointing and exhausting to those resorting to the courts for redress and preven-

tion of wrongs. There is room for further progress. Impatience with the law's delays, sometimes significantly manifested, will disappear without any change in the law of procedure, by changes of method within the province of the court to make of its own motion, demonstrating that the fault supposed to exist is, in the main, in the administration of the law, rather than in the law itself.

Seeming opportunity for worth-while progress is most inviting in cases like those before us. Where a new law which is questioned as to its meaning and its legitimacy in many important minor features as well as the dominant done,—a law of far-reaching character, materially affecting the people generally and bristling with complications, each presenting, from some reasonable standpoint, serious difficulty, is brought early here for examination in all such aspects,—brought by the exercise of prerogative power, so that all the people, as it were, are represented at the bar to the end that the enactment, so far as valid, may be vigorously enforced and cheerfully submitted to, and the mischiefs ordinarily flowing from such a course for a time and the law then being found full of infirmities, may be avoided, why should not the earliest opportunity afforded be willingly taken to carry the whole mass of things to the consultation room and patiently and finally solve the uncertainties, thus promptly affording peace to the state and its people in respect to the matter? The power exists to do it. Universal acclaim is in favor thereof. We are here to vitalize the power intrusted to us to do it. We have time therefor. We are as able now for the task as we probably ever will be. If we have not had as efficient help as we are likely to have at any future time, the power is ample to call for and obtain further assistance from eminent advocates of opposing theories. Then why hesitate? Is there any good reason for it?

I cannot perceive any satisfactory answer in the affirmative to the foregoing. Hesitation is largely from judicial custom to delay grappling with questions so long as possible, with the thought that time will either render doing it unnecessary, or a decision may perhaps be later made under more favorable circumstances, and habit to minimize judicial labor where practicable without affecting the grade of it, to the end that each of the controversies brought here may have its due proportion of

attention. I confess the court's burdens are heavy and that the easiest way of escape from danger, if any exists, of which I must say I am not conscious, of its being unduly so, is by limiting decisions to actual necessities of cases as they arise. That was for a time given as a sufficient justification for limiting activity of prerogative jurisdiction to a very narrow field and limiting it therein to the essentials of each particular situation. State ex rel. Board of Education v. Haben, 22 Wis. 101; Re Court of Honor, 109 Wis. 625, 85 N. W. 497.

While the scope of the prerogative power was early definitely stated, and it has thus been maintained, if the burden of work here was ever a legitimate excuse for not exercising jurisdiction, within such scope, to make a full decision in a case thought to be of a character to warrant the court in stepping aside from its ordinary labor to entertain it at all, that ended long since. When such doctrine took root there were but three members of the court and the equipment for labor was very crude compared to that now afforded. There is certainly no longer need for leaving anything undone which might properly be done, because of the burden of work.

So, again, the inquiry is suggested, why should not the court in all cases of great public interest, make the fullest practicable decision instead of leaving as much ground uncovered as practicable? In such a situation as this it seems that the court should not cease its labors till the whole subject in all important details shall have been exhausted. If any such shall not have been fully presented, or been overlooked, opportunity should be given, if help can be reasonably expected thereby, for further discussion at the bar, so in the end that the court may furnish executive officers and the people a plain, certain guide to go by. I urged that at first and again on the motion for rehearing. There are many important questions left undecided. Each may furnish ground for expensive litigation. To settle all in detail will require large public and private expenditure which must be charged to waste. Conservation of time and money and peace, avoiding all such waste, can be effected by just a few days' more time now, which could well be spared to devote to the matter.

A motion for a rehearing was denied March 12, 1912.

UNITED STATES SUPREME COURT.

SAMUEL HAIGHT, Plff. in Err. v. THE PITTSBURG, FT. WAYNE AND CHICAGO RAILROAD COMPANY.

[See S. C., 6 Wall., 15–18, 18 L. ed. 818.]

Clause in railroad mortgage — effect as to tax — right of company to deduct tax from coupons.

A clause in a mortgage made by a railway company that the company shall pay the principal and interest without any deduction for any taxes or assessments whatsoever has no application to the income tax of bondholders under the 122d section of the Internal Revenue Act of 1864.

The company is authorized to deduct or withhold the amount of such when paid by it, from the coupons or interest due by it on such mortgage and the accompanying bonds.

[No. 301.]

Submitted Jan. 29, 1868. Decided Feb. 10, 1868.

In error to the Circuit Court of the United States for the Western District of Pennsylvania.

The following is a copy of the opinion of the court below, containing the statement of the case referred to and approved in the opinion of this court:

"On the 10th day of April, 1857, Samuel Haight and wife conveyed to the Pittsburg, Fort Wayne and Chicago Railway Company a lot of ground in the City of Pittsburg for $105,000. $5,000 was paid in hand, and for the residue of the purchase money, Mr. Haight received one hundred bonds of $1,000 each, with coupons attached, bearing seven per cent., payable semi-annually. Those bonds are secured by mortgage on the premises, containing in the clause of defeasance the usual stipulation, 'without any fraud or further delay, and without any deduction, defalcation, or abatement, to be made of anything for, or in respect to any taxes, charges, or assessments whatsoever.' By the Internal Revenue law the interest upon those bonds is subject to a tax of five per cent.

The bonds have nearly twenty years yet to run, and the mortgage upon the above recited clause of which it is claimed the defendants have incurred the liability to pay this tax, could

not be sued for foreclosure until a year and a day after the maturity of the bonds. As the mortgage is a mere security for the payment of the bonds and their accruing interest, their satisfaction would be its discharge. We must then recur to the coupons, upon which property this suit is instituted. What are they but income—the annual profit upon money safely invested? There is no special contract to pay government taxes upon the interest. The measure of the defendants' liability is expressed in the bonds as being debt and interest only. They have nothing to do with the taxes which the government may impose upon the plaintiff for the interest payable to him. The clause in the mortgage cannot enlarge the obligation which the mortgage was given to secure; that is, the payment of debt and interest. It is to be found in all mortgages, and if the doctrine contended for by the plaintiff be sound, the standard by which the imposition of taxes should be regulated would be in proportion to a man's poverty and not his wealth; for the mortgagor would be bound to pay, not only his own taxes, but those of the mortgagee. It was admitted at the argument that the plaintiff, a citizen of New York, paid no internal tax on these bonds at the place of his residence. It is, therefore, no case of double taxation. It was to be paid somewhere, and it was to meet investments like this in banks, railroads, insurance and other companies, that the 122d section of the Act of 1864 was passed. Congress enjoined it as a duty upon all such corporations to deduct and withhold from all payments on account of any interest or coupons and dividends due and payable, the tax of five per cent.; and provided that the payment of the same shall discharge the said companies from that amount of the interest or coupon, unless where said companies have contracted otherwise. And it was properly so provided, for citizens of the United States, resident both at home and abroad, sometimes forget the institutions in which their capital is invested."

Judgment having been entered in accordance with this opinion in the court below, the case was brought here on a writ of error.

Mr. *Joseph Knox,* for plaintiff in error:

The plaintiff contends that the Company cannot deduct the taxes set forth in the stated case from the interest due the plaintiff, because it has, in the language of the Act of Congress, "contracted otherwise."

In discussing the question, the defendant and the court be-

low were brought to the conclusion adverse to the plaintiff, by holding that the tax imposed in the 122d section was a tax on the income of the plaintiff as income, and not a tax on the thing or interest of the bond. When this section is read by itself and without reference to the other sections, this construction appears to be the natural one; but when the whole Act is read, we think that the better construction is, that the tax is imposed on the thing and not on the income.

See Acts of July 1st, 1862; March 3d, 1865; July 13th, 1866; March 2d, 1867; June 3d, 1864.

Messrs. *W. H. Lowrie* and *Robert McKnight,* for defendant in error:

The whole duty of the defendant to the plaintiff is shown by the bonds and coupons, and they show no contract to pay taxes. The mortgage is merely collateral security for the performance of these, the principal contracts, and when it is satisfied the mortgage is *functus officio* and must be discharged. It is unreasonable to suppose that a principal contract is intended to be enlarged by giving security for its performance.

The clause relied on by the plaintiff is common to all mortgages, in its substance at least, and its purpose is plain. The legal title is by the mortgage, in form at least, transferred to the mortgagee and, in possession or not, he may possibly be subject to the taxes on the land, or the mortgagor may pay them while the title is in the mortgagee; and this clause means that in that case the mortgagee shall not be required to give back the land or the title without being refunded all taxes thus paid by him, or kept clear of all, as well as paid the principal debt and interest. Men everywhere will be surprised if it be decided that this is a contract to pay all taxes on the debts secured by such mortgages; for there are state as well as federal taxes on debts bearing interest.

The condition annexed to the collateral security means merely to regulate the terms on which the pledge is to be held or applied or resorted to, and affects only the title to that. If that be not needed for the enforcement of the principal contract, then the contract of pledge with all its conditions goes for nothing. Its conditions cannot be transfused as contracts with the principal obligation.

This is a tax upon a part of plaintiff's income, and it is quite absurd to suppose that the defendant intended a contract to

pay that, irrespective of the place where the plaintiff might reside, and be taxed for his income, whether in New York, London, Algiers or Japan.

This is clearly a tax on the plaintiff, and he never would have thought of charging it to defendant had it not been for the peculiar way in which, for the convenience and advantage of the government, it is collected; it is not because of this form, any less the plaintiff's own tax paid by him according to law, and not one which the defendant has contracted to pay.

The cases of taxing ground rents and the land out of which they issue bear some analogy to this. But, under a similar covenant by the terre-tenant for the payment of taxes in such cases, he is not bound to pay the taxes on the ground rent without an express covenant to do so.

Franciscus v. Reigart, 4 Watts, 120; Robinson v. Allegheny Co., 7 Pa., 161; Platt, Covenants, 211, etc.

Here there can be no pretense that there is any such contract.

Mr. Justice Grier delivered the opinion of the court:

The facts in this case are properly stated and the law correctly decided by the learned judge of the circuit court.

The provision in the condition of the mortgage "that it shall be void on payment of debt and interest, without any deduction made for or in respect of any taxes, charges or assessments whatsoever," has reference only to covenants between mortgagor and mortgagee, and is usual in every mortgage, in order to secure the mortgagee, who may not be in possession, from a demand for taxes incurred while the mortgagor was in possession. It can have no possible application to the income tax of bondholders. The 122d section of the Revenue Act of June 30, 1864, ch. 172 (13 Stat. at L. 284), which requires all corporations "to deduct and withhold from all payments on account of any interest or coupons and dividends, due and payable, the tax," etc., was not only for greater facility of collection, but to insure its payment by foreigners who may enjoy large incomes from such securities. The corporations often contract to pay for the bondholder all such taxes; but when they have not so contracted they are authorized to deduct or withhold the amount of the tax. In all assessments of income tax, the citizen is credited with the amount thus detained; so that here is no double taxation.

Judgment affirmed.

UNITED STATES SUPREME COURT.

THE NORTHERN CENTRAL RAILWAY COMPANY, Plaintiff in Err., v. JOHN G. JACKSON.

[7 Wall., 262-269, 19 L. ed. 88.]

Pennsylvania Tax Law — effect of, on coupons — Act of June 30, 1864 — of March 10 and July 13, 1866.

Pennsylvania law taxing money owing by solvent debtors, by bond or otherwise, is not operative upon coupons of bonds upon a railroad company lying partly without the State.

By the Act of June 30, 1864, it was not the intent of Congress to impose an income tax on non-resident aliens.

Whether the subsequent Acts of March 10th and July 13th, 1866, which imposed a tax on alien non-resident bondholders, are within the power of Congress, this court expresses no opinion.

[No. 16.]

Argued Mar. 17, 1869. Decided Feb. 1, 1869.

In error to the Circuit Court of the United States for the District of Maryland.

The case is stated by the court.

Messrs. *J. Mason Campbell* and *Bernard Carter,* for plaintiff in error:

It is submitted—

That section 122 of the Internal Revenue Act, passed June 30, 1864, covers, by express and adequate language, the whole question as far as the national tax is concerned.

The language used is plain and not susceptible in itself of misconstruction. It applies in terms to all the coupons of the class named, and to all holders of such coupons, without any other exception or reservation than the obvious one of cases covered by special contracts. No exception is in terms made in favor of aliens.

The true view taken of the 122d section of the Act of Congress of June 30, 1864, 13 Stat. at L. p. 284, ch. 173, is, that it is a tax on the whole property of the corporation; or tax on the income of the Corporation, treating the Corporation, for this purpose, as a natural person; and taking its whole revenue after deducting working expenses, it imposes a tax of five per

cent. on this revenue. Now, these net earnings are ascertained, first, by taking what is appropriated to paying interest on its bonds, if any it has; and, second, by taking the amount paid for dividends to its stockholders; these two sums embrace its whole net earnings; these are what are taxed, and the tax thus imposed having been paid to the United States, only what is left is to be paid to the holders of the bonds in the one case, and the owners of the stock in the other.

The same principle is acted on in sections 120, 121 of same Act.

The plaintiff in error, though incorporated by the State of Maryland, has existence and is in the exercise of its powers in Pennsylvania, in consequence of the legislation of that State, and the proceedings set forth in the record; and having its habitation as well as its property there, and issuing the bonds held by defendant in error under its laws, is subject to and embraced by the tax laws of that State.

Laws of Pa. 1854, No. 531; Laws of Md. 1854, ch. 250; Bank of U. S. v. Deveaux, 5 Cranch, 61; Bk. of Augusta v. Earle, 13 Pet. 519; Society, etc. v. New Haven, 8 Wheat. 482; Binney's Case, 2 Bland (Md.), Ch. 143; R. R. Co. v. Letson, 2 How. 497.

The 32d section of the Act of Apr. 29, 1844 (Purd. Dig. 949), enumerates the objects of taxation, and among others, "money owing by solvent debtors."

The 34th section imposes a tax of three mills on every dollar of the value of the properties enumerated in the 32d section.

The Act of May 1, 1854 (Purd. 942), places a legislative construction upon the Act of 1844.

The right to deduct the tax from the coupons is declared by the Act of April 30, 1864, sec. 3 (Purd. 1378).

These several Acts have received a judicial interpretation by the highest legal tribunal in that State, in the recent case of Maltby v. R. & C. R. R. Co. 52 Pa. 140.

By that decision the tax is sustained, as well as the right of the Company to deduct it from the amount of the coupons, without reference to the citizenship or residence of the holder.

This court will adopt the construction placed on the Pennsylvania Statutes by the Supreme Court of that State, in the case of Maltby v. R. & C. R. R. Co. 52 Pa. 140, although this de-

cision was rendered after the decision of the circuit court now under review.

U. S. v. Morrison, 4 Pet. 124, 6 Pet. 291, 4 Wall. 217 (71 U. S. XVIII. 342).

The State of Pennsylvania, as well as the United States, had a clear right to impose the taxes in question, and the fact that the defendant in error is a British subject and resident abroad, is altogether immaterial.

The principles announced in the authorities hereto appended, support this proposition.

McCulloch v. Maryland, 4 Wheat. 429; Prov. Bank v. Billings, 4 Pet. 561; Tilghman, Ch. J. in Milne v. Moreton, 6 Binn. 353; Ogden v. Saunders, 12 Wheat. 358; Story, Confl. L. secs. 549, 550; Harrison v. Sterry, 5 Cranch, 289.

The taxes in question are not taxes on the person of the defendant in error, but on his property, which in this case is the debt due to him, as evidenced by the bonds of the plaintiff in error, which are secured on the whole of its property in Maryland and Pennsylvania; this debt, for the purposes of taxation, has location here.

We deduce this proposition from the cases cited under the last point, and also from the following: 16 Pet. 447; Gordon v. Appeal Tax Court, 3 How. 133; The Tax Cases, 12 Gill & Johnson, 117.

Messrs. *George H. Williams* and *Wm. A. Fisher,* for defendant in error:

The defendant in error will insist that, by the true construction of the Internal Revenue Act of Congress, approved June 30, 1864, no attempt was made to tax the incomes of persons, except of citizens of the United States wherever resident, and the incomes of residents, whether citizens or not. Secs. 116, 117, 122.

That, for like reasons, the State of Pennsylvania had no right to tax the coupons on bonds where both debtor and creditor were outside its territory, and neither of them its subject. That the Northern Central Railway Company was a Maryland Corporation, and had no legal existence as such in Pennsylvania, and the coupons were payable at the Company's office in Baltimore.

Ohio & Miss. R. R. v. Wheeler, 1 Black, 286 (66 U. S. XVII. 130); State v. N. C. R. R. Co. 18 Md. 213, 216.

That, by the true construction of the Tax Laws of Pennsylvania, no such attempt has been made. Bank of Hamilton v. Dudley, 2 Pet. 574; Swift v. Tyson, 16 Pet. 18.

Mr. Justice NELSON delivered the opinion of the court:

This is a writ of error to the Circuit Court of the United States for the District of Maryland.

The suit was brought by Jackson, a non-resident alien, against the Northern Central Railway Company, incorporated by the State of Maryland, to recover $2,650 coupons attached to bonds issued by the Company. A copy of one is as follows:

"The Northern Central Railway Company will pay to the bearer, January 1, 1865, $30, being a half year's interest on bond No. 1827 for $1,000. J. S. LIEB, Treasurer."

The signature of the treasurer was admitted. The plaintiff then proved a demand of payment, at which time and place the Company offered to pay the amount, deducting the tax of five per centum per annum to the United States, under an Act of Congress; and a further tax of three mills per dollar of the principal of each bond claimed to be due to the State of Pennsylvania; which offer of payment was refused.

The plaintiff also gave in evidence charters incorporating the Northern Central Railroad Company by the State of Maryland, and of Pennsylvania, and rested.

Defendant then gave in evidence the articles of consolidation of four railroad companies, one of which had been incorporated by the State of Maryland, and the three others by the State of Pennsylvania, embracing a line of road extending from Baltimore to Sunbury, Pennsylvania.

This consolidation was entered into by the respective companies in pursuance of the Acts of the Legislatures of the two States; and by means of which the four companies were merged in one, called the Northern Central Railway Company, and was incorporated by the same name by the Legislature of each State. The stockholders of the old companies received from the new twice the number of shares held by them in the old and, upon the receipt of which, the old shares were canceled after this Company was thus organized and the directors elected; and, on the 20th December, 1855, it executed a mortgage to a Board of Trustees upon the entire line of its road from Baltimore to

Sunbury, including all its property and estate situate within both the States, which mortgage was given to secure the payment of $2,500,000 in bonds, to be issued in amounts therein specified. The bonds were issued by the Company accordingly. A portion of them is in the hands of the plaintiff, the coupons attached to which are the subject of this suit.

Upon this state of the case, it is insisted on the part of the defense that the Northern Central Railway Company is entitled to have a deduction from the coupons of three mills per dollar, of the principal of each bond as a tax imposed on the same by the State of Pennsylvania. This is denied by the plaintiff.

It has been argued for the plaintiff, that the Acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied, as the courts of the State have expounded these laws, that they authorize the deduction, and if no other objection existed against the tax, the defense would fail. If this was an open question we should have concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. These Acts, as expounded, tax "money owing by solvent debtors whether by promissory note, penal or single bill, bond or judgment," and imposed three mills on the dollar of the principal, payable out of the interest, and it is made the duty of the president or other officer of the Company, who pays the coupons or interest to the holder, to retain the amount of the tax. Nor shall we inquire into the competency of the Legislature of Pennsyvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say, that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such nonresident. It is not a tax of the money loaned, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident holder.

The ground upon which we place the objection in this case to the tax is, in brief, that the bonds, amounting to $2,500,000, of which those in question are a part, were issued by this Com-

pany upon the credit of the line of road, its franchises and fixtures, extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. The old Company, to which this line belonged, by the Act of Consolidation, transferred it, with its fixtures and all other interests connected therewith, including their stock, to the new organization which have issued these bonds. The security, therefore, pledged and bound for the payment of them and of the interest embraces this Maryland portion of the road; and in case of a failure to pay the principal or interest, this portion with its franchises and fixtures would be liable to sale in satisfaction of the bonds and interest.

Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interest beyond her jurisdiction. This portion avails her tax roll as effectually as if it was situate within her own limits. The Maryland portion is not liable for the payment of any specified part or quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue, in the usual way, by this N. C. Railway Co., and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds and, therefore, none can be made, in the taxation, with reference to the line within the respective jurisdiction of the States. If the tax is permitted as it respects one bond, it must be as it respects all.

Again; if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interest outside of its limits would be larger.

The consequence of this tax of three mills on the dollar, if permitted, would be double taxation of the bondholder. Each State could tax the entire issue of bonds, amounting, as we have seen to $2,500,000.

The effect of this taxation upon the bondholder is readily

seen. A tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest. A tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum; and if this consolidation of the line of road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.

Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the Acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction.

The next question is, whether or not the coupons were subject to a tax of five per centum per annum to the United States on the 1st of July, 1865, when they became due.

The first income tax was imposed by the Act of Congress, passed August 5th, 1861. (12 Stat. at L. 309). The 49th sec. of that Act directed to be levied and collected upon the annual income of every person residing in the United States, from whatever source derived, a tax of three per centum on the amount of the excess of such income over $800; and, upon the income, rents or dividend accruing upon property, etc., owned in the United States by any citizen residing abroad, at tax of five per centum.

The next Act was passed July 1, 1862 (Ib. p. 473), and sec. 90 directed to be levied and collected a tax of three per centum on the annual income of every person residing in the United States, over $600 and under $10,000, and exceeding $10,000, a tax of five per centum; and upon the income of citizens residing abroad a tax of five per centum. The next section provides that the portion of income derived, among other things, from interest on bonds, or other evidences of indebtedness of any railroad company or other corporation which shall have been assessed and paid by said companies, shall be deducted from that prescribed in the previous section; and section 81 directs that this tax on the bonds and evidences of indebtedness shall be paid by the companies which may deduct the same to the payment of interest to the bondholders.

The next is the Act of June 30, 1864 (13 U. S. St., 281, sec.

116), and directs the levy and collection of a tax of five per centum upon the excess of income, and every person residing in the United States, or of any citizen residing abroad, over $600 and under $5,000; seven and a half per centum over $5,000 and not exceeding $10,000, and a tax of ten per centum over $10,000. The next section provides for the same deduction from the income arising out of bonds and other evidences of indebtedness of railroad companies, as in the Act of July 1, 1862, and also for the payment of the same by the companies.

This Act was in force when the coupons in question fell due, and is the one by which the tax of five per centum claimed on the bonds of the plaintiff must be determined. The court below held that the Act did not include a nonresident alien, and directed a verdict and judgment for the whole amount of interest. The decision was placed mainly on the ground that, looking at the several provisions bearing upon the question, and giving to them a reasonable construction, it was believed not to be the intent of Congress to impose an income tax on non-resident aliens; that they were not only not included in the description of persons upon whom the tax was imposed, but were impliedly excluded by confining it to residents of the United States and citizens residing abroad; and that the deduction from the prescribed income of the interest on these railroad bonds, when paid by the companies, was regarded as simply a mode of collecting this part of the income tax. We concur in this view. It is not important, however, to pursue the argument, as Congress has since, in express terms, by the Acts of March 10th and July 13th, 1866, imposed a tax on alien non-resident bondholders. The question hereafter will be, not whether the laws embrace the alien non-resident holder, but whether it is competent for Congress to impose it; upon which we express no opinion.

The judgment of the court below is affirmed.

Mr. Justice Clifford dissenting:

I dissent from the opinion and judgment of the court in this case, because I think the taxes in question, both state and federal, were legally assessed, and that the officers of the railway company properly deducted the same from the amount of the coupons described in the declaration.

Also dissenting, Mr. Justice Swayne.

UNITED STATES SUPREME COURT.

UNITED STATES, Petitioner, v. FREDERICK W. WHITRIDGE, as Receiver of the Third Avenue Railroad Company et al. (No. 466.)

UNITED STATES, Petitioner, v. ADRIAN H. JOLINE and Douglas Robinson, as Receivers of the Metropolitan Street Railway Company et al. (No. 467.)

[231 U. S. 144, 58 L. ed. —]

Internal revenue — Federal corporation tax — effect of receivership. The income derived from the management of street railway lines by receivers authorized and required by the order for their appointment to manage and operate such railways, and to discharge their public duties subject to the supervision of the court, is not subject to the excise tax imposed by the act of August 5, 1909 (36 Stat. at L. chap. 6, pp. 11, 112–117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946), § 38, upon the doing or carrying on of business in a corporate capacity.

[Nos. 466 and 467.]

Argued October 21, 1913. Decided November 10, 1913.

Two writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit to review decrees which affirmed decrees of the District Court for the Southern District of New York in favor of the receivers of street railway companies in suits to require them to make returns of the net income for the purpose of the Federal corporation tax law. Affirmed.

See same case below, 117 C. C. A. 556, 198 Fed. 774.

The facts are stated in the opinion.

Mr. Assistant Attorney General *Graham* for the United States.

Messrs. *Joseph H. Choate, Jr.,* and *Matthew C. Fleming* for respondent in No. 466.

Messrs. *Arthur H. Masten* and *Ellis W. Leavenworth* for respondent in No. 467.

Mr. Justice PITNEY delivered the opinion of the court:

These cases were heard together in the district court and in the circuit court of appeals (sub nom. Pennsylvania Steel Co. v. New York City R. Co. 193 Fed. 286, 117 C. C. A. 556, 198 Fed. 774). They were argued together in this court, and may be disposed of in a single opinion.

In the years 1909 and 1910 certain lines of street railway in the city of New York, that may be conveniently designated as the Third Avenue system, were in the hands of the respondent Whitridge, as receiver, under orders made in the year 1908 by the circuit court of the United States for the southern district of New York in actions pending therein against the several proprietary companies. One of these actions was a foreclosure suit; the others were creditors' actions based upon the insolvency of the respective companies. The powers conferred upon the receiver did not vary in any respect now material, and so a recital of the substance of one of the orders will suffice as an example. This order constituted Whitridge receiver of all the railroads and other property of the company, including tracks, cars, and other rolling stock and equipment, easements, privileges, and franchises, and the tolls, earnings, income, rents, issues, and profits thereof, with authority "to run, manage, and operate the said railroads and properties, to collect the rents, income, tolls, issues, and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this court." By the same order the officers, agents, and employees of the company were required to turn over and deliver to the receiver all of the said property in their hands or under their control, and the company was enjoined from interfering in any way with his possession or management.

In the same years (1909 and 1910) certain other lines of street railway in the city of New York, which may be described as the Metropolitan system, were in the possession of the respondents Joline and Robinson as receivers, appointed in the year 1907 by the circuit court of the United States for the same district, in several actions therein pending against the corporations which were owners of these lines. The orders appointing these receivers contain provisions substantially similar to those

already recited. See Re Metropolitan R. Receivership (Re Reisenberg) 208 U. S. 90, 93–96, 52 L. ed. 403–405, 28 Sup. Ct. Rep. 219.

In the year 1911, petitions were filed in the circuit court in behalf of the United States, praying for orders directing the receivers to make returns of the net income of the respective railway corporations for the years 1909 and 1910, to the collector of internal revenue, in the manner required by the provisions of the corporation tax law (act of August 5, 1909, § 38, 36 Stat. at L. chap. 6, pp. 11, 112–117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946).

The applications were resisted by the receivers on the ground that the respective corporations did not, during the years 1909 and 1910, carry on any business in respect of the property that was in their hands as such receivers; that they as such receivers managed, controlled, and operated the same, and carried on all the business in respect thereto, and received all the income arising therefrom, not acting in place of the directors and officers of the respective companies, but as officers of the court; and that they were therefore not subject to the provisions of the act.

Jurisdiction of the controversy having been transferred to the district court by virtue of the new Judicial Code, § 290 [36 Stat. at L. 1167, chap. 231, U. S. Comp. Stat. Supp. 1911, p. 243], that court sustained the contention of the receivers (193 Fed. 286) and the circuit court of appeals affirmed this decision (117 C. C. A. 556, 198 Fed. 774). The cases are brought here by writs of certiorari.

As had been repeatedly pointed out by this court, the corporation tax law of 1909—enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment—imposed an excise tax, and not in any sense a tax upon property or upon income merely as income. It was enacted in view of the decision of this court in Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law (act of August 27, 1894, 28 Stat. at L. chap. 349, pp. 509, 553, §§ 27 etc., U. S. Comp. Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within

the meaning of the Constitution, and because not apportioned in the manner required by that instrument.

As was said in Flint v. Stone Tracy Co. 220 U. S. 107, 145, 55 L. ed. 389, 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312, ante, 739, respecting the act of August 5, 1909: "The tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and, with respect to the carrying on thereof, in a sum equivalent to 1 per centum upon the entire net income over and above $5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity." This interpretation was adhered to and made the basis of decision in Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361 and McCoach v. Minehill & S. H. R. Co. 228 U. S. 295, 300, 57 L. ed. 842, 33 Sup. Ct. Rep. 419, ante, 825.

A reference to the language of the act† is sufficient to show

† Sec. 38. That every corporation . . . organized for profit and having a capital stock represented by shares . . . organized under the laws of the United States or of any state . . . and engaged in business in any state . . . shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation . . . equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations . . . subject to the tax hereby imposed . . .

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation . . . received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties . . .

And on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations . . . subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation . . . has its principal place of business.

that it does not in terms impose a tax upon corporate property or franchises as such, nor upon the income arising from the conduct of business unless it be carried on by the corporation. Nor does it in terms impose any duty upon the receivers of corporations or of corporate property, with respect to paying taxes upon the income arising from their management of the corporate assets, or with respect to making any return of such income.

And we are unable to perceive that such receivers are within the spirit and purpose of the act, any more than they are within its letter. True, they may hold, for the time, all the franchises and property of the corporation, excepting its primary franchise of corporate existence. In the present cases, the receivers were authorized and required to manage and operate the railroads, and to discharge the public obligations of the corporations in this behalf. But they did this as officers of the court, and subject to the orders of the court; not as officers of the respective corporations, nor with the advantages that inhere in corporate organization as such. The possession and control of the receivers constituted, on the contrary, an ouster of corporate management and control, with the accompanying advantages and privileges.

Without amplifying the discussion, we content ourselves with saying that, having regard to the genesis of the legislation, the constitutional limitation in view of which it was evidently framed, the language employed by the lawmaker, and the reason and spirit of the enactment, all considerations alike lead to the conclusion that the act of 1909 did not impose a tax upon the income derived from the management of corporate property by receivers, under such conditions as are here presented.

Decrees affirmed.

APPENDIX.

PART VIII.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
WASHINGTON.

REGULATIONS.

[Form 1000 is given as subsequently amended.]

Regarding the deduction of the Income Tax at the source on interest maturing on bonds, notes, and other similar obligations of corporations, joint-stock companies, or associations and insurance companies, under the provisions of section II. of the act of October 3, 1913.

Tax to Be Deducted at Source. Under the income tax law enacted October 3, 1913, a tax of 1 per cent., designated in the law as the normal tax, shall be deducted at "the source," begining November 1, 1913, from all income accruing and payable to—

(a) Every citizen of the United States, whether residing at home or abroad; and to

(b) Every person residing in the United States, though not a citizen thereof,

which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to $3,000, excepting only the interest upon the obligations of the United

States or its possessions, or a State or any political subdivision thereof.

The term "debtor," as hereinafter used, shall be construed to cover all corporations, joint-stock companies or associations, and insurance companies.

When Tax Shall be Withheld by Debtor. For the purpose of collecting this tax on all coupons and registered interest originating or payable in the United States the source shall be the debtor (or its paying agent in the United States), which shall deduct the tax when same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon: *Provided* that all such coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured.

These certificates shall be in the forms hereinafter prescribed, and a separate certificate shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations, of each debtor.

When Tax Shall be Withheld by First Collecting Agency. If, however, the coupons or interest orders are not accompanied be certificates as prescribed above, the first bank, trust company, banking firm, or individual, or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax and shall attach to such coupons or interest orders its own certificate, giving the name and address of the owner of, or the persons presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders; also setting forth the fact that they are withholding the tax upon them; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver to the Government the certificate of such bank, trust company, etc.; which is withholding such tax money.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest, and to whom the certificates above provided for are delivered, should require the persons tendering

such coupons or orders for registered interest to satisfactorily establish their identity.

Payment of Registered Interest by Debtors. A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds until there shall be filed with said debtor or its fiscal agent (and not later than thirty (30) days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed as follows:

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2 of the Federal income-tax law, or

By corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G, subdivision A, of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such.

Designation of Fiscal Agencies. The "debtor" may appoint paying or fiscal agents to act for it in matters pertaining to the collection of this tax upon filing with the collector of internal revenue for its district a proper notice of the appointment of such agent or agents.

Certificates Claiming Exemption. If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the full name and address of the owners, and shall also state whether they claim or do not then claim exemption from taxation at the source provided for by paragraph C of section II. of the Federal income-tax law ($3,000, and under certain con-

ditions $4,000) as to the income represented by such coupons or interest.

The certificates shall also show the amount, if any, of exemption claimed and the date of signature.

The form of certificates to be used for this purpose shall be substantially as follows:

Form 1000.

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS STATING WHETHER OR NOT EXEMPTION IS CLAIMED UNDER PARAGRAPH C, SECTION 2, OF THE FEDERAL INCOME TAX LAW.

I do solemnly declare that I, ..., a citizen or resident of the
(Give full address.)
United States, and residing at ....., am the owner of $ ..... bonds of the denominations of $..... each, Nos. .....
.....
.....
of the .....
(Give name of debtor.)
known as ..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $..... of registered interest.

I {do / do not} now claim, with respect to the income represented by said interest, the benefit of a deduction of $ ..... allowed under paragraph C, Section II., of the Federal income-tax law.

Name .....

Date ....., 191...

Whenever interest coupons, accompanied by a certificate of an individual who is a citizen or resident of the United States, as aforesaid, are presented to a debtor or its fiscal agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its fiscal agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership in the form herein prescribed.

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, except

that it shall be filed with the debtor at least five (5) days before the due date of such interest.

By Whom Signed. These certificates must be signed by the claimants with their full name, and contain their post office, and street address, also the date when signed.

Duly authorized agents, trustees acting in a trust capacity, etc., may sign such certificates for the persons for whom they act.

Organizations Whose Interest Coupons are not Taxed at Source. If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision A of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupon or interest orders are presented for payment.

Such certificate shall be substantially in the following form:

Form 1001.

CERTIFICATE TO BE FURNISHED BY ORGANIZATIONS NOT SUBJECT TO TAX ON INTEREST AT SOURCE.

I, ..., the ..... of the
(Give name.) (Give official position.)
..... a ..... of .....
(Name of organization) (Character of organization) (State)
located at ..... do solemnly declare that said
(Postoffice address.)
..... is the owner of $.....
(Give name of organization.)
bonds of the denomination of $..... each, Nos. .....
.....
..... of the .....
(Give name of debtor.)
known as ..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due ..... 191..

amounting to $....., or upon which there matured ..... 191.. $..... of registered interest, and that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Name .....
(Official position.)
Of .....
(Name of organization.)
Address .....
(Post office.)

This certificate must be signed by the full name of the organization, stating its place of business, and by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, together with the date of execution.

How Collected When Not Accompanied by the Certificate of Owner. Where coupons or interest orders are not accompanied by the ownership certificates, the form to be executed by the first bank, trust company, banking firm, individual, or collection agency receiving the same for collection or otherwise, which must accompany the coupons or interest orders, shall be substantially as follows:

Form 1002.

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS WHEN NOT ACCOMPANIED BY CERTIFICATE OF OWNERS.

I, ..., the .....
(Name.) (Official position.)
of the ....., of ....., do solemnly
(Bank or collecting agency.) (Address.)
declare that said ..... has (or have) purchased or ac-
(Collecting agency.)
cepted for collection the accompanying coupons or interest orders amounting to $....., and which represent interest matured on $..... of the bonds of the ..... and that .....
(Name of debtor.) (Collecting agency.)
received said coupons or orders for registered interest from
..... of ....., and that
(Name of party from whom received.) (Address of said party.)
no certificate of ownership accompanied said coupons or interest orders, and ..... hereby acknowledges responsibility of
(Collecting agency.)

withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Name.....
(Collecting agency.)
By.....
(Signature of officer duly authorized to sign, and his official position.)
Address.....
(Give full address.)

Date ..... 191...

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency, or person withholding the tax, with full name and address.

Final Disposition of Certificates. The debtor or paying agents shall deliver all certificates with the list of names and addresses of those for whom the tax has been withheld, showing amounts, as required by law, to the *collector of internal revenue* for their district on or before the twentieth day of the month succeeding that in which said certificates were received by them.

Interest Due Before March 1, 1913. The tax shall not be withheld on coupons or registered interest maturing and payable before March 1, 1913, although presented for payment at a later date.

License Required for Collection of Income From Foreign Countries. All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue and may be required to give bond in such amount and under such conditions as the Commissioner of Internal Revenue may prescribe.

By Whom Tax Is Withheld. The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise shall withhold therefrom the normal tax of 1 per cent and will be held responsible therefor. He (the licensee)

shall thereupon indorse or stamp thereon the words "income tax withheld by" (giving his or their name, address and date), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., make it impracticable to make said indorsement, as above, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

List of Tax Collections on Foreign Items. Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted, and from what source collected.

Certificates to Secure Tax Exemption on Foreign Items. In the event such coupons, checks, or bills of exchange, above mentioned, are presented for collection by an individual claiming the benefit of the deductions allowable under paragraph C, section II. of the Federal income-tax law, such individual shall be permitted to avail himself of the deduction claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid to the collector of internal revenue for his district, not later than the 20th of the month next succeeding that in which said items were received, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse, or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent

holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations set forth in this section of the regulations include the interest upon all foreign bonds, even though the coupons may be at the option of the holder, payable in the United States as well as in some foreign country.

Accurate Record to Be Kept by Licensees. All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers.

Penalty for Omission to Obtain License. Failure to obtain license or to *comply with regulations* is punishable by a *fine* not exceeding *$5,000, or imprisonment* not exceeding *one year, or both,* in the discretion of the court. Such licenses shall continue in force until revoked.

Application for such licenses should be made to the collectors of internal revenue for the district in which they are engaged in business, and may be issued without cost to such persons as the commissioner may approve, upon their filing with the collector the bond herein provided for.

All persons in making application to the collector of internal revenue for such licenses shall register their names and addresses and state the nature of the business in which they are engaged. Such application for the license, accompanied by a proper surety bond when both have been approved by the collector, will be considered a sufficient compliance with the law to enable the persons making application to do business until February 1, 1914, without incurring the penalties provided by law for failure to procure the required license.

Penalty for False Statements. If any person, for the purpose of obtaining any allowance or reduction by virtue of a claim for exemption, either for himself or for any other, knowingly makes a false statement or false or fraudulent representation, he is liable under the act to severe penalties.

Partnerships. Where coupons or interest orders, presented for payment, represent the interest on bonds, or other similar obligations, owned by a partnership, they shall be accompanied

by a certificate of ownership, which shall be signed either in the firm's name by one member of the firm or by each individual member of the partnership, and the normal tax shall be withheld by the debtor with respect to the income represented by said interest.

Said certificate of ownership shall be in substantially the following form:

Form 1003.

FORM OF CERTIFICATE TO BE FILLED OUT AND SIGNED BY MEMBERS OF PARTNERSHIPS.

The following certificate should be used when coupons or interest orders are presented by citizens or residents of the United States for collection of interest on bonds, or other similar obligations, owned by the partnerships of which they are members:

I, ..., a member of the firm or partnership of .....of ..... and residing at.....
(Give full address.)
do solemnly declare that the said partnership is the owner of $ ..... bonds of the denomination of $..... each, Nos. .....
.....
of the .....
(Give name of debtor.)
known as ..... bonds, from which were
(Describe the particular issue of bonds.)
detached the accompanying interest coupons, due ..... 191.., amounting to $..... or upon which there matured ..... 191.., $..... of registered interest, and that the name and address of said firm or partnership, and the names of the individual members thereof, and their places of residence, are as follows:

Names of partners:	Address:
.....	.....
.....	.....
.....	.....
.....	.....

Name of partner signing: .....
Of firm of: .....
Address: .....
Date ..... 191...

Any member of a partnership, who is entitled to a deduction (under Paragraph C. Section II., of the Income Tax Law) of

his pro rata share of the tax which may be withheld at the source on interest on bonds owned by his copartnership, as above, may claim such deduction or allowance when he shall make his individual income tax return for the year in which said deduction at the source was made.

Non-Resident Foreigners Owning Interest-Bearing Bonds Not Subject to Taxation on Income From Such Bonds if Proper Certificate Furnished. This tax will not be deducted from the income which may be derived from interest on bonds, mortgages, equipment trusts, receivers' certificates, or other similar obligations of which the bona fide owners are citizens of foreign countries residing in foreign countries: *Provided,* that such interest coupons or, in case of wholly registered bonds, the orders for the payment of such interest, shall be accompanied by duly certified certificates, hereinafter provided for to recover the cases of foreign and non-resident owners of bonds and other securities.

Unless such proof of foreign ownership is duly furnished, the normal tax of 1 per cent shall be deducted as herein provided.

Such certificate shall be in substantially the following form:

Form 1004.

FORM OF CERTIFICATE TO BE PRESENTED WITH COUPONS OR INTEREST ORDERS, DETACHED FROM BONDS OR OTHER OBLIGATIONS OWNED BY THOSE WHO ARE BOTH CITIZENS OR SUBJECTS, AND RESIDENTS OF FOREIGN COUNTRIES.

I do solemnly declare that I am not a citizen or resident of the United States of America, but a subject (or citizen) of ....., and that I am the owner of $..... bonds of the denomination of $..... each, Nos. .... of the ..... known as
(Give name of debtor corporation.)
..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $....., of registered interest, and that being a nonresident foreigner, I am exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in,

the United States, or any of its possessions, has any interest in said bonds, coupons, or interest.

Signature of owner of bonds .....
(Give full name.)

Date ....., 191 .

Address .....
(Give full post office address.)

Temporary Provision. In view of the fact that the time required for the interpretation of the law and preparation and issuance of these regulations brings the date so near November 1, and that many coupons payable upon that date are already in transit without the prescribed certificates attached with a desire to cause as small an amount of inconvenience as possible to bondholders and general business as may be compatible with the provisions of the law and of these regulations, the following temporary provision is made:

On November 1, 1913, and for 15 days thereafter, coupons presented to a debtor need not be accompanied by certificates in any of the forms hereinbefore described, provided that such coupons are accompanied by a certificate substantially in the following form:

Form 1005.

FORM OF TEMPORARY CERTIFICATES WHICH MAY BE USED ONLY PRIOR TO NOVEMBER 16, 1913, SUBJECT TO SUBSTITUTION.

I (we) hereby certify that I am (we are) lawfully entitled to present for payment the accompanying coupons or interest orders, amounting to $..... (giving amount) representing interest matured on the following bonds ..... (giving name of debtor and designating the description, style, and numbers of the bonds); that said coupons or interest orders came into my (our) possession unaccompanied by a certificate of ownership of said bonds, in any of the forms required by the regulations of the United States Treasury Department; and that the name and address of the owner of such bonds are as follows: .....
(give name and address of owner; if impossible to do this, so state).

Name of person, firm, or corporation presenting coupons:

.....

Address .....

On or before February 1, 1914, certificates of the ownership of any, of the bonds, upon which was collected the interest

referred to in such temporary certificates, in any of the forms above set forth, may be delivered to the debtor; and said debtor may thereupon return any sum withheld to which the owner of such bonds may be entitled under the law and regulations upon the facts disclosed by such ownership certificates.

Any temporary certificates relating to bonds, for which certificates of ownership shall not have been substituted with the Debtor, shall, on or before March 1, 1914, be delivered to the collector of internal revenue.

All certificates shall be 8 inches wide and 3½ inches from top to bottom, and printed on paper corresponding in weight and texture to glazed bond paper, 17x28, about 26 pounds to the ream of 500 sheets, or white writing paper, 31x33, about 32 pounds to the ream of 500 sheets, and the person or corporation first receiving coupons for collection shall write or stamp his or its name and address and date on the back of said certificates.

(T. D. 1890.)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
WASHINGTON.

REGULATIONS.

(Part 2)

Regarding the Deduction of the Income Tax at the Source on Income other than Interest Maturing on Bonds, Notes, and Other Similar Obligations of Corporations, Joint-Stock Companies or Associations, and Insurance Companies.

Under the Provisions of Section 2 of the Federal Income-Tax Law of October 3, 1913.

The "source" in these regulations shall be construed as referring to the place where the income originates.

By whom the normal tax shall be deducted and withheld. All persons, firms, etc., mentioned in paragraph E of this law,

hereinafter referred to either as "Debtors" or "withholding agents," namely:

> Copartnerships, companies, corporations, joint-stock companies, or associations, insurance companies, in whatever capacity acting, including lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest (except income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations upon which the normal tax of 1 per cent has otherwise been withheld at the source, as provided by these regulations), rents, salaries, wages, royalties, taxable annuities, emoluments, or other fixed or determinable gains, profits, and income of another person, exceeding $3,000 for any taxable year, except as hereinafter provided,

shall deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax of 1 per cent imposed thereon by section 2 of this act, and shall make lawful return and pay the taxes so withheld to the collector of internal revenue for the district in which said withholding agent resides or has his, her, or its principal place of business.

The normal tax of 1 per cent shall be thus withheld from all income derived from fixed annual periodical rent of realty or personalty, interest (except as herein otherwise provided), salaries, royalties, taxable annuities, and other fixed annual periodical income exceeding $3,000.

Items upon which tax is not to be withheld at the source. (1) Dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations and insurance companies subject to like tax, when said withholding agents are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district.

(2) Proceeds of life insurance policies paid upon the death of the person insured, or payments made by or credited to the

insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of contract—all of which shall not be included as income under this law—but this shall not be construed to exempt said insurance companies from withholding and paying the normal tax of 1 per cent on interest income paid by insurance companies to beneficiaries of policies when said interest exceeds $3,000.

(3) Income of an individual which is *not* fixed or certain, and payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but shall be returned, and the tax shall be paid thereon by the individual.

Income derived from the following professions and vocations come under this head: Farmers, merchants, agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons. Such persons shall make personal return of all their income, provided their total income from all sources exceeds $3,000. For example: When a lawyer receives a retainer of $5,000 as a special fee, a deduction therefrom shall not be made by the payer, but when a lawyer receives a retainer of $5,000 *per annum*, and the exemption claimed is $3,000, $2,000 of such income would be taxed and the tax retained at the source, or if his exemption claimed should be $4,000, $1,000 of such income would be taxed and the tax thereon withheld at the source.

(4) The value of property acquired by gift, bequest, devise, or descent.

(5) Interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof paid by a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

This exempts from the income tax all salaries paid to an individual by a State or any political subdivision thereof, including the salaries of State, county, and municipal officers, the salaries of public-school teachers, and special compensation

paid by States or subdivisions thereof for professional services, whether in the shape of salaries or special fees.

Normal tax on the same income is to be withheld but once. The normal tax of 1 per cent shall be deducted and withheld *at the source,* and payment made to the Collector of Internal Revenue as provided in the law, by the Debtor or his, her, or its duly appointed agent authorized to make such deduction and payment.

No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of 1 per cent thereon: *Provided,* That any person, firm, or organization in whatever capacity acting, other than the Debtor who has withheld said tax, shall file with the Collector of Internal Revenue for his, her, or its district, a certificate in substantially the following form:

Form 1006.

Form of Certificate to be filed by persons, firms, or organizations required to withhold and pay said tax other than the Debtor at the source.

To: ....., *Collector of Internal Revenue,*
(Name of collector of internal revenue.)

.....
(Give address and designate district.)

I, ..., ...
(Name.) (Official title, if any.)

of the ....., ...
(Person, firm, or organization.) (Capacity in which acting.)

of ....., do solemnly declare that I (we)
(Post-office address.)

received of ..... $....., same being
(Name from whom received.)

income derived from .....
(State source, whether rents, salary, or other sources.)

belonging to ....., ...
(Give name of person to whom income is due.) (Address.)

and that the tax thereon amounting to $....., to which said person is subject, has been withheld at the source of said income by

....., ...
(Name of person withholding.) (Postoffice address.)

(Signed) .....

Address .....
(Street and number.)

.....
(City and State.)

Date: ....., 191....

Exemptions which may be claimed by individuals. Any person subject to the normal tax of 1 per cent, the amount of which is withheld or is to be withheld at the source, wishing to avail himself or herself of the exemption provided in paragraph C, section 2, of this act ($3,000 or $4,000, as the case may be) must file with the withholding agent, not later than 30 days prior to the day on which the return on his income is due, a notice in the following form:

Form 1007.

Form for claiming exemption at the source as provided in paragraph C, section 2, of the Federal income-tax law of October 3, 1913.

To .....
(Give name of withholding agent.)

.....
(Post-office address.)

I hereby serve you with notice that I ..... am *single—married and living with my wife—husband*, and now claim the
(Strike out so as to show status correctly.)
benefit of the exemption of $....., as allowed in paragraphs C and D of section 2 of the Federal income-tax law of October 3, 1913 (my total exemption under said paragraphs being $.....).

Signed: .....
Address: .....
(Street and number.)
.....
(City and State.)

Date: ....., 191....

By whom exemptions under paragraph C, section 2, of this act, may be claimed. Every single person, or every married person not living with wife or husband, who is liable for the normal income tax under this law may claim a total deduction of $3,000 from net income, on which deduction he or she is exempt from said normal tax of 1 per cent.

Where a husband and wife live together and only one of them has an annual income liable for the normal tax of 1 per cent, then the husband or wife who has the income shall make the return and pay the said tax and may claim and deduct an exemption of $4,000.

But if a husband and wife live together and each has an

annual income liable for the normal tax of 1 per cent, then in that event they shall make a separate return, and the $4,000 exemption allowed to a husband and a wife when living together may be claimed and deducted by *either* the husband or wife, as they may mutually agree (but not by both separately), or the said exemption shall be *prorated* between them in proportion to their net income.

Amount of exemption allowable for 1913 under paragraph C, section 2, of the Federal income-tax law. For the present year of 1913 (from March 1 to December 31) exemptions allowed under paragraph C of this law will be five-sixths of those of the calendar year, as specified in paragraph D, namely, $2,500 if the exemption is $3,000, or $3,333.33 if the exemption is $4,000, as the case may be.

When and on what amount the Normal tax of 1 per cent shall be withheld. A withholding agent who pays monthly or periodically during the year interest (except income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, etc., upon which the normal tax of 1 per cent has been withheld at the source, as provided by regulations), rents, salaries, wages, etc., shall not withhold the said tax until such time as the rents, salaries, wages, etc., shall have reached an aggregate amount in excess of $3,000. When such amount has been reached he, she, or it shall withhold the tax on the whole $3,000 and excess thereof, *unless* the person to whom the income is due files with him, her, or it the notice above provided, claiming exemption under paragraph C of section 2 of this act, in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of $3,000 or $4,000 (as the case may be), and the tax so withheld shall be returned and paid as required by law.

Deductions to be made in computing net income. Any person subject to the normal income tax of 1 per cent, a part of whose income is withheld or is to be withheld at the source, who may wish to avail himself of the deductions authorized in subsection B, section 2, of this act, may file either with the Collector of Internal Revenue for the district in which return is made for him, or with the withholding agent, not later than

30 days prior to March 1, a return and notice in substantially the following form:

Form No. 1008.

UNITED STATES INTERNAL REVENUE

Return making application for deductions, as provided by paragraphs B and E, section 2 of the Federal income-tax law of October 3, 1913.

To .....
(Name of withholding agent.)

.....
(Street and number.)

.....
(Town or city.) (State.)

I hereby solemnly declare that the following is a true and correct return of my gains, profits, and income from all other sources for the calendar year ended December 31, 191... (from March 1 to December 31 for the year 1913), and a true and correct return of deductions asked for under paragraph B of section 2 of the act of October 3, 1913, and I hereby claim deductions as shown below.

Amount of gains, profits, interest, rents, royalties, profits from copartnerships, and income from all other sources whatsoever $.....

DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, except business expenses of partnerships, and not including personal, living, or family expenses ..... $.....
2. All interest paid within the year on personal indebtedness of taxpayer ..... $.....
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits) ..... $.....
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise ..... $.....
5. Debts due, which have been actually ascertained to be worthless and charged off within the year $.....
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed in the case of mines 5 per cent of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made ..... $.....

7. The amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income $.....
8. The amount of income, the tax upon which has been paid or withheld for payment at the source of income ..... $.....

$.....

Total deductions ..... $.....

(Signed) .....

Address .....

.....

Date ....., 191....

Note.—Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law.

Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income-tax law.

Amount of deduction allowable for 1913 according to paragraphs B and D of section 2 of this act. For the present year of 1913 (from March 1 to December 31) the deductions allowed under paragraph B shall be five-sixths of the deductions allowable for a calendar year, as specified in paragraph D of this law.

Amount of tax to be withheld for 1913, and when withheld. The withholding agent is not required to deduct and withhold prior to November 1, 1913, the normal tax of 1 per cent for which an individual is liable.

Whenever the total amount of income paid to any person by a withholding agent *after* October 31, 1913, shall be in excess of $3,000, then, in that event, the withholding agent shall be liable for and shall deduct and withhold the tax on such amount, unless such person shall file a claim for an exemption as allowed in paragraph D of this act, the amount of exemption allowable being $2,500 if the annual exemption is $3,000, or $3,333.33 if the annual exemption is $4,000, as the case may be.

Persons physically unable to make returns. If a person

subject to said tax part of whose income is withheld or is to be withheld, is a minor or insane person, or is absent from the United States, or unable to make the application or return because of serious illness, the application or return may be made by the withholding agent, who shall make the following oath under the penalties of this act:

Form 1009.

Form of oath required of a withholding agent when acting for another in filing return and making application for deductions allowable under paragraph B, as provided in paragraph E, section 2, of the Federal income-tax law of October 3, 1913.

I hereby swear (or affirm) that I have sufficient knowledge of the affairs and property of ..... to
(Naming person and address for whom acting.)
enable me to make a full and complete return for .....,
(Naming person.)
and that the return of income and application for deductions made by me are true and accurate.

(Signed) .....
Address .....
(Street and number.)
.....
(City and State.)

Date: ....., 191....
Signed and sworn to before ....., 191....
.....

Penalties. Subsection F of section 2 of the income-tax law provides *inter alia* as follows:

Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made shall be guilty of a misdemeanor and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved October 31, 1913.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1891.)

Income tax on notes given for interest, rents, etc.

How tax shall be collected when such notes before their maturitiy shall have been sold by the payee or recipient, or shall have been discounted with banks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1913.

To collectors of internal revenue:

When a note shall have been given in payment of interest, rents, or other income accruing after March 1, 1913, and said note matures on or after November 1, 1913, the *maker of the note,* as the "debtor" and as the "source" where the income originates, is required, in paying such note, to withhold the normal tax of 1 per cent on the entire amount of the note, if said note is in excess of $3,000, *unless* a claim shall be made for exemption of $3,000 or $4,000 (as the case may be) under the provisions of paragraph C, section 2 of the act; and, if such claim for exemption shall be made (as provided for on Form 1007), then the said tax shall be withheld only on the amount of said note *in excess of the exemption* claimed in said certificate.

If any person who has purchased or discounted any of said notes may have omitted, in acquiring them from previous holder, to make a deduction or allowance for said tax, such purchaser can only look for relief to the person from whom he shall have gotten the notes, and the "debtor," the maker of said notes, will be held liable for and be required to deduct, withhold, and pay to the collector of internal revenue the amount of the normal tax of 1 per cent which may be due thereon under the law and these regulations.

To illustrate:

A (unmarried, and who does not claim the $3,000 exemption provided in paragraph C of section 2 of the income-tax law) borrows on May 1, 1912, $120,000 from B at 6 per cent per annum interest on two years' time, and gives B his bond for $120,000 for the principal and four $3,600 notes, each representing six months' interest, for the maturing interest, payable

May 1 and November 1 each year. On October 1, 1913, B takes A's interest note for $3,600, due November 1, 1913 (which bears no mark to indicate that it represents interest), to the Richmond National Bank; the bank is not informed that the note represents interest, but being satisfied that A, the maker of the note, is good without additional indorsement, discounts the note for B at the rate of 6 per cent per annum and pays to B the proceeds—$3,582.

On November 1, 1913, the note matures and the bank calls on A, the maker, to pay the note. A offers the bank $3,654, which is equal to $3,600 less the 1 per cent tax of $36, informing the bank that the note represents interest which he owes and that, under the Federal income-tax law, he is required to deduct this tax from the face of the note in making payment.

The bank claims that it was not informed that the note represented interest, and, therefore, subject to this tax; but *A is, nevertheless, required under the law to withhold the tax.*

If A under his contract with B had agreed to pay the interest *without deduction for any income tax* which might be imposed by the Government, he would, of course, after deducting the 1 per cent tax for the Government, pay the bank, as holder of the note, the full amount of $3,600. But, if the contract between A and B did *not* provide that A would pay the full interest without deducting such income tax as the Government might impose, and, if the bank should, therefore, desire to reimburse itself for the amount of the tax thus deducted by A, the bank can look only to B, for whom it discounted the note, and the question as to whether this $36 deduction should be borne by B or by the bank is a question which must be settled mutually between the bank and B.

W. H. Osborn,
Commissioner of Internal Revenue.

(T. D. 1892.)

Income tax.

Interest upon obligations of the United States or its possessions, or of any State, county, city, or any other political subdivision thereof, is not subject to income tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1913.

To collectors of internal revenue:

It has been called to the attention of this office that banks in certain sections are refusing to pay coupons for interest on bonds of States, counties, cities, or other political subdivisions of the United States, when such coupons are not accompanied by certificates of ownership, without deducting the normal income tax of 1 per cent, which the law and the regulations of this department require shall be deducted at the source in paying the interest on bonds of corporations, joint-stock companies or associations, and insurance companies.

Please inform all parties interested, giving the information wide publicity, that the income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, *is not subject to the income tax,* and a certificate of ownership in connection with the coupons or registered interest orders for such interest will not be required.

The interest coupons should clearly show on their face whether they are issued by the United States or any political subdivision thereof. If, however, they do not clearly show this, then, of course, an ownership certificate should be required.

W. H. OSBORN, *Commissioner.*

(T. D. 1893.)

Income tax.

Income tax on the interest on bank deposits and bank certificates of deposit not to be withheld at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1913.

To collectors of internal revenue:

Banks, bankers, trust companies, and other banking institutions receiving deposits of money are *not required* under the Treasury regulations (part 2), approved October 31, 1913, to withhold at the source the normal income tax of 1 per cent on the interest paid or accrued or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid or accrued and not paid, must be included in his tax return by the person or persons entitled to receive such interest, whether on open account or on the certificate of deposit.

W. H. OSBORN, *Commissioner.*

Approved:

W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1894.)

Income tax.

Income tax ruling as to how and by whom certificates of ownership may be signed in cases where bonds of corporations, joint-stock companies, or associations, and insurance companies are owned by nonresident aliens.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 12, 1913.

To collectors of internal revenue:

Coupons (or orders for registered interest) payable in the United States, representing the interest on bonds owned by nonresident aliens, *must be accompanied by the prescribed Certificate*—Form 1004, as per Treasury Regulations of October 25, 1913—but this Certificate may be signed either by the owner himself (herself or themselves) or in behalf of the owner by a reputable bank or bankers, or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide nonresident and alien owners, and when such Certificate is thus attached the normal tax of 1 per cent on such coupons or interest orders need not be withheld at the source by the debtor or collecting agency.

Respectfully,
W. H. OSBORN, *Commissioner.*

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1897.)

Income tax.

Instructions to collectors relative to corporations, joint-stock companies or associations, and insurance companies making return of annual net income for their fiscal years instead of the calendar year.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 14, 1913.

To collectors of internal revenue:

The Federal income-tax law (sec. 2, act of Oct. 3, 1913) authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established "fiscal year," or consecutive 12-months' period, which may be other than the calendar year.

Pursuant to this provision, the following instructions are issued for the guidance of collectors and other interested parties:

Any corporation, joint-stock company or association, or any insurance company, subject to the tax imposed by this act, may, at its option, have the tax payable by it computed upon the basis of the net income received (accrued) from all sources during its fiscal year, *provided* that it shall designate the *last day* of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, *not less than thirty days prior to the date upon which its annual return is to be filed,* give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.

In pursuance of this provision, a corporation or like organization subject to this tax may, for example, designate the 30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close

of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector *not less than thirty days prior to the last day of such sixty-day period.* In the case just instanced, the notice must be given not later than October 31.

If such designation (Sept. 30, 1913), had been made and notice given, as herenbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income received (accrued) by it during the period from January 1 to September 30, 1913, both dates inclusive.

In the absence of such designation and notice of the closing of the fiscal year corporations and like organizations subject to this tax will be required to make their returns and have the tax computed upon the basis of the net income for the calendar year.

Collectors of internal revenue receiving notice of the selection and designation of the "fiscal years," as above indicated, will make record of the same, recording (*a*) the name of the corporation or like organization, (*b*) the date when the notice was given, (*c*) the day designated for the closing of the fiscal year, and (*d*) the date when the return under such designation must be filed, which must be, as above stated, not later than the last day of the 60-day period next following the day designated as the close of the fiscal year.

If it shall appear that for the current year the notice was given within the prescribed time—that is, within 30 days of the last day of the 60-day period—the 1913 return may be made as of the fiscal year so established; otherwise it will be made *on the basis of the calendar year* until such time as the designation shall be duly made and notice thereof properly given.

The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30, 1914, as the date of the closing of its fiscal year and gives notice of such designation, it would not be authorized to make a return for the 4 months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the

case of such corporation the return for the current year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the 4 months ended April 30, 1914, and *thereafter* the return will be made on the basis of the fiscal year so established.

In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year.

Such returns, for the period covered, must be true and accurate, definite and complete, and, in as far as consistent with the provisions of the law, must conform to the showing made by the books of the company, and must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated.

If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year.

Returns made under this act and pursuant to these instructions must be made on the new forms prescribed by this department.

The forms heretofore in use, under the special excise-tax law, cannot be used for making returns for either the fiscal or calendar year 1913.

If returns of such corporations as have properly established a fiscal year are due to be made before the new forms are available, the collector will be authorized to grant an extension of time to such corporations, not exceeding 30 days, for the filing of such returns, by which time the new forms prescribed will be available for distribution.

W. H. Osborn, *Commissioner.*

Approved:

W. G. McAdoo,

Secretary of the Treasury.

INCOME TAX—SUPPLEMENTAL REGULATIONS.

Containing Treasury Decisions Nos. 1901 to 1909, Inclusive.

(T. D. 1901.)

Income tax.

Waiver until March 31, 1914, the Treasury requirements for the filling in on certificates of the numbers of the bonds of corporations, etc., upon the interest from which the normal income tax of 1 per cent is required to be deducted at the source under the provisions of the income-tax law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Notice is hereby given that the Treasury Regulations heretofore issued, which require that the *numbers of the bonds,* or other like obligations of corporations, etc., from which interest coupons are detached, or upon which registered interest is to be paid, shall be filled in on the certificates, are hereby waived, *so far as the filling in of the numbers of the bonds or other such obligations on the certificate is concerned,* until March 31, 1914.

In all other respects, the certificates referred to must be filled in in accordance with the Treasury Regulations, before the coupons or orders for registered interest to which they may be attached shall be paid.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913.
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1902.)

Income tax.

Extension of time for use of temporary form 1005, from November 16, 1913, to January 15, 1914, so far as foreign holders of coupons and interest orders may be concerned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

The time for the use of temporary certificate (Form 1005) shall be extended from November 16, 1913, to January 15, 1914, when signed by a person, firm, or corporation licensed under Paragraph E of the income-tax law, provided such form shall only be used in cases where the coupons to which it shall relate shall have been received by such licensed person, firm, or corporation from a foreign country.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved November 28, 1913.

W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1903.)

Income Tax.

Regulations permitting the substitution, under certain conditions, of the certificates of banks, bankers, or other collecting agents, for the certificates of the owners required to be attached to interest coupons when presented for collection, under income tax regulations of October 25, 1913, and those supplementary thereto.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Treasury Regulations of October 25, 1913, and those supplementary thereto, require that, under the conditions therein prescribed, there shall be attached to interest coupons, maturing on bonds and other similar obligations of corporations, etc., which may be presented for collection, certain certificates of ownership signed by the owners of the bonds from which the coupons were detached or by their duly authorized agents.

Notice is hereby given that responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached may either present the coupons with the attached certificates to the debtor or withholding agent for collection, or, at the option of the collecting agent, the certificates above referred to may be detached from such coupons and forwarded direct to the Commissioner of Internal Revenue at Washington, D. C., as hereinafter set forth, *provided* such bank, banker, or collecting agent shall thereupon substitute for said owners' certificate and attach to said coupons, in lieu of said certificate of owner, a certificate signed by said bank, banker, or collecting agent, to whom said coupons may have been first presented for collection, in substantially the following form:

(Form 1000*a*.)

Form of certificate to be attached to interest coupons in cases where the Collecting agent's certificate is substituted for the certificate of the owners.

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the

collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the owner of
(Name of collecting agent.)
$..... bonds of the ..... from which were de-
(Name of debtor organization.)
tached the accompanying interest coupons due ....., 191—, amount-
(Maturity.)
ing to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form. No. ....., which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., 191—," and
(Name of collecting agency.) (Date.)
in which the said owner { does / does not } claim, with respect to the income represented by said interest, the benefit of a deduction of $....., allowed under paragraph C, Section II, of the Federal income-tax law, the total exemption of which said owner now claims to be entitled thereunder being $....., and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191—, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of the next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date ....., 191... Address .....

The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection, must be given the following indorsement by the collecting agents and should be made preferably with a rubber stamp:

Owner's certificate No. ....

.....

(Name of collecting agency.)

....., 191–.

(Give date of certificate.)

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent, by whom the coupons are payable.

Certificates of owners for which collecting agents' certificates are substituted must be forwarded to the Commissioner of Internal Revenue at Washington, D. C., by the collecting agency receiving them not later than the 20th day of the month succeeding that in which said coupons were thus received for collection.

All banks, bankers, or other collecting agents who may substitute their certificates from the certificates of owners under the foregoing plan will be required to keep a complete record of all such transactions and substitutions of certificates, showing all certificates for which the collecting agents' certificates have been issued in lieu of the owners' certificates.

This record should be kept by months and should give the following information:

Serial number of item received.

Date received.

Name of person from whom received.

Address.

Name of debtor corporation.

Class of bond from which coupons were cut.

Face amount of coupons collected.

Deductions from tax claimed by owners under paragraph C of Federal income-tax law.

Amount of interest collected.

Until the further ruling by this department, the banks, bankers, and other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will not be required to secure a license from the Treasury Department for being permitted to make such substitutions of their own certificate for those of the owners, provided these regulations are strictly complied with.

The permission to banks, bankers, and collecting agents to substitute their own certificates under the above regulations for those of the owners of the bonds, etc., will extend to responsible banks, bankers, and collecting agents in foreign countries, as well as to those in the United States.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved November 28, 1913.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1904.)

Supplemental regulations relative to duly authorized agent's authority to sign certificates of ownership which accompany coupons or registered interest orders when presented for collection.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Certificates of ownership which are required to accompany all coupons or registered interest orders under regulations made in pursuance of section 2, act of October 3, 1913, may be signed in the name of the owner of the bonds, by his duly authorized agent, and the said certificates shall give the full name and address of both the owner and his authorized agent.

If the person, firm, or organization to whom the certificate thus signed is presented for collection is reasonably satisfied as to the identity and responsibility of the person signing as duly authorized agent, he or it shall stamp or write on the face of said certificate, "Satisfied as to identity and responsibility of agent," giving name and address of person thus certifying, and said certificate may then be accepted by persons, firms, or organizations to whom presented, without requiring further evidence as to authority of agent.

If the person, firm, or organization first receiving certificate of ownership signed by an agent is not satisfied or can not satisfy himself or itself as to the agent's identity and responsibility, then, in that event, the authorized agent shall furnished evidence of his authority so to act, which evidence will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall then be indorsed as provided herein.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1905.)

Income tax.

Supplemental regulations relative to partnerships.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

Inasmuch as individual members of a partnership are liable for income tax upon their respective interest in the net earnings of said partnership and are required to include said net earnings in their personal returns, the partnership may file with the debtor corporation, or with a withholding agent, a notice, signed in the name of the partnership, by a member thereof, claiming a deduction of a specific amount on account of the legitimate expenses (not including the personal or living expenses of the partners) incurred in conducting the business of said partnership, and, upon receipt of said notice, said withholding agent shall not withhold, and shall not be held liable for, the normal tax on the amount of income equal to the amount of deduction claimed in said notice, but in no event shall the total of the amounts claimed, as provided herein, be in excess of the total amount of the actual legitimate annual expenses incurred by said partnership in the conduct of its business. Application for such deduction shall be made in substantially the following form:

Form 1011.

Form of certificate to be filed with withholding agents by partnerships claiming deductions.

I, ..., a member of the firm or partnership of..... ..... of ....., conducting the business of ...., and residing at ....., do
(Give character of business conducted by partnership.)
(Give full address.)
do solemnly declare that the said partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the .....
(Give name of debtor.)
known as ..... bonds, from which were detached the
(Describe the particular issue of bonds.)
accompanying interest coupons due ....., 191–, amounting

to $..... or upon which there matured ..... , 191.., $..... of registered interest, or is the owner of ....
(Property or investments.)
upon which there accrued ....., 191–, $..... of income.

We hereby claim a deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and do solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed.

Name of signing partner.....
For.....
(Name of Partnership.)
Address.....

Date....., 191–,

Partnerships are not subject *as partnerships* to the income tax and are required to make statements of their income and earnings as partnerships only when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business, and when such a statement is required, as aforesaid, the said statement shall give a complete and correct report of the gross income of the said partnership and also a complete account of the actual legitimate annual expenses of conducting the business of said partnership (not including living and personal expenses of the partners) and the net profits and the name and address of each of the members of said partnership and their respective interest in the net profits thus reported.

The net annual income of a partnership when apportioned and paid to the members thereof, shall be returned by each individual partner receiving same, in his annual return of net income, and the tax shall be paid thereon by said individual partner, as required by law.

When the annual income of a partnership is not distributed and paid to the members thereof, the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as part of their gross income, the same as if said profits had been distributed and paid to them.

Undivided annual net income of partnerships thus returned by the individual members thereof, upon which the tax shall have been paid, shall not, when said profits are actually distributed and paid to the partners, be again included in their annual return as a part of their gross income.

Foreign partnerships or firms, all the members of which are both citizens or subjects and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks, of corporations, joint-stock companies or associations and insurance companies, organized or doing business in the United States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States, certificate and notice of ownership, setting forth the facts as to nonresidence and alienship, and the debtor or withholding agent shall not withhold any part of their said income.

Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners resident in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership, who is a citizen of the United States or who is a foreigner residing in the United States or its possessions, shall be given on the said certificate, and no part of said income shall be withheld by the paying agent.

The said certificate and notice of ownership shall be in substantially the following form:

Form 1014.

Form of certificate to be presented with coupons or interest, or other income orders, detached from bonds or other obligations owned by partnerships or firm of foreign countries.

I, ..., a member of the firm or partnership of..... of....., and residing at ..... do
(Give full address.)
solemnly declare that the said partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the

....., known as ..... from
(Give name of debtor.) (Describe the particular issue of bonds.)
which were detached the accompanying interest coupons, due.....,
191–, amounting to $..... or upon which there matured .....,
191–, $..... of registered interest, or is the owner of .....,
(Property or investments.)
upon which there has accrued ....., 191–, $..... of
income, and that all the members of said firm or partnership, except
....., are nonresi-
(Give name and address of partners not nonresident aliens.)
dent foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest.

Name of partner signing .....
For.....
(Name of partnership.)
Address.....

Date, ..., 191–.

W. H. Osborn, *Commissioner.*

Approved:
W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1906.)

Income tax.

Supplemental regulations designating guardians, trustees, executors, administrators, agents, etc., as the "source" for purpose of collecting income tax and as to making annual and list returns and withholding tax.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., November 28, 1913.

Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity *hereinafter referred to and known as the fiduciary,* who hold in trust an estate of an-

other person or persons shall be designated the "source" for the purpose of collecting the income tax, and by filing the following notice with other debtors or withholding agents, said fiduciary shall be exempt from having any income due to them as such, withheld for any income tax by any other debtor or withholding agent.

Other debtors or withholding agents, upon receipt of this notice, shall refrain from withholding any part of such income from said fiduciary and will not, in such case, be held liable for normal tax of 1 per cent due thereon. The form of notice to be filed with the debtor or withholding agent by the fiduciary shall be substantially as follows:

Form 1015.

Form of certificate to be filed with debtor or withholding agents by fiduciaries.

The following form of certificate should be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source.

I (we) do solemnly declare that I (we) ..... am
(Name fiduciary.)
(are) the duly authorized .....for
(Indicate in what capacity acting.)
the beneficiaries of the estate or trust of ..... which estate or trust is entitled to the income from $..... bonds of the denominations of $..... each, Nos.....
.....
.....
.....
of the ....
(Give name of debtor.)
known as ..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due .....
191–, amounting to $....., or upon which there has matured ..... 191–, $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued..... 191–, $..... of income.

Acting for and in the capacity as stated herein, I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the

law, of withholding and paying the income tax due, for which I (we) may be liable, and acting in said fiduciary capacity as stated herein, I (we) do hereby claim exemption from having the normal tax withheld from said income.

.....; .....
(Name.) (Capacity in which acting.)
Address.....

Date .....191–.

RETURNS MADE BY FIDUCIARY AGENTS.

Said fiduciaries shall, on or before March 1 of each year, when the annual interest of any beneficiary in said income is in excess of $3,000, make and render a return of the income of the person or persons for whom they act to the collector of internal revenue of the district in which the fiduciary resides.

This return shall give an itemized statement of the gross income and deductions claimed and shall be in the same form as prescribed for annual return made by individuals.

Said fiduciary acts for and in behalf of the beneficiaries of said trust, and the annual return required as above in behalf of said beneficiaries has reference only to the income accruing and payable through said fiduciary, and not the income of said beneficiaries from other sources, unless the said fiduciary is legally authorized to act for said beneficiaries in their individual capacity, in which case said fiduciary, acting as duly authorized agent of the individual, shall also make the personal annual return as provided by law.

There shall accompany the annual return of said fiduciary a list giving the name and full address of such beneficiary and the share of said income to which each may be entitled.

LIST RETURNS FILED BY FIDUCIARY AGENTS.

Fiduciary agents, in addition to the annual return of income required by these regulations, shall make an annual list return, as provided by regulations for withholding agents, whenever payments of income to any beneficiary is in excess of $3,000. Said list return shall be made on or before March 1 of each year to the collector of internal revenue for the district in which said fiduciary resides or has his principal place of business, giving

name and address of each beneficiary of said trust, to whom annual income in excess of $3,000 is paid, the amount of income paid to each beneficiary, giving source of income, the amount of exemption claimed by each beneficiary, if any and the amount of income withheld for tax, and the said list return shall be signed by the fiduciary making same, stating in what capacity acting, and give his name and full address.

Fiduciaries having an annual income that is not distributed or paid to each beneficiary, giving source o fincome, the amount of acts shall make an annual list return, as provided herein, and said list return shall show that name and address of each beneficiary having a distributive interest in said income in excess of $3,000, stating the distributive amount of each beneficiary, and shall give all information as required in said list returns, and shall withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said beneficiaries in excess of $3,000, the same as if said income was actually distributed and paid; exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent.

When the fiduciary agents deduct, withhold, and pay the normal tax on undivided annual net income as provided herein, they shall not be required to withhold and pay again the normal tax on said income when actually distributed and paid to said beneficiaries, nor shall the beneficiaries be required again to pay the normal tax on the amounts on which the tax has been paid when such amounts are distributed.

Where the normal tax is withheld and paid by fiduciary agents on undivided annual income, beneficiaries (or their legal representatives) in whose behalf said tax is paid may file notice with said fiduciary and claim the beneficiary and claim the benefit of any annual exemption they may be entitled to under paragraph C. of the act of October 3, 1913, as provided by regulations, the same as if their distributive interest in said income was actually paid.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved:
W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1907.)

Income tax.

Supplemental instructions as to acceptance of certificate Form 1000 as originally prescribed in regulations of October 25, 1913; and the original and amended Form 1000 as it has been adapted to the use of fiduciary agents; and certificate Forms 1001, 1003 and 1004 as they have been adapted to the use of foreign organizations and partnerships.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 26, 1913.

Certificates of ownership, Form 1000, as originally prescribed in regulations of October 25, 1913, shall be accepted by debtors or withholding agents when properly filled in and signed by the owner of the bonds or his duly authorized agent until December 10, 1913, and after that date only the amended Form 1000, as prescribed by regulations, shall be accepted.

Form 1000, original and amended, as it has been adapted to the use of guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in a fiduciary capacity, when properly filled in and signed and giving the information required by the regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for fiduciary agents are issued, and for 30 days thereafter.

Forms 1001, 1003, and 1004, as they have been adapted to the use of foreign organizations and foreign partnership, when properly filled in and signed and giving the information required by regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for foreign organizations and foreign partnerships are issued, and for thirty days thereafter.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
W. G. MCADOO,
Secretary of the Treasury.

(T. D. 1908.)

Income tax.

Regulations prescribing form of certificate to be furnished by foreign organizations not engaged in business in the United States and not subject to the income tax on interest or other income collectible at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1913.

The certificate to be furnished by foreign organizations not engaged in business in the United States shall be in substantially the following form:

Form 1016.

Certificate to be furnished by foreign organizations not subject to tax on interest or other income at source.

I, ..., the .....of the
(Give name.) (Give official position.)
....., a ..... of
(Name of organization.) (Character of organization.)
....., located at .....,
(County.) Postoffice address.)
do solemnly declare that said .....
(Give name of organization.)
is a foreign organization, not engaged in business in the United States, and is the owner of $..... bonds of the denomination of $ ..... each, Nos. .....
.....
.....
of the ....., known as.....
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due.....,
191–, amounting to $....., or upon which there matured.....,
191–, $....., of registered interest, or is the owner of.....
..... upon which there was accrued.....,
(Property or investments.)
191–, $..... of income, and that under the provisions of the income tax law of October 3, 1913, said organization being a foreign organization,

said interest or income is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Date ....., 191...

Name .....

Address ....

(Postoffice.) (Official position.)

Of.....

(Name of organization.)

W. H. Osborn,
Commissioner of Internal Revenue.

Approved November 28, 1913.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1909.)

Income tax.

License required for collection of income received from foreign countries.—Supplemental regulations as to making application, filing bond, and issuing license to collecting agencies of income from foreign countries.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., November 28, 1913.

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc.,

(*a*) for or in payment of interest upon bonds issued in foreign countries, and

(*b*) upon foreign mortgages or like obligations, and

(*c*) for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries,

who are required by law to obtain a license from the Commissioner of Internal Revenue, shall make application to the col-

lector of internal revenue for the district in which they do business, for such license in the following form:

Form of Application for License for the Collection of Income From Foreign Countries.

Form 1017.

UNITED STATES INTERNAL REVENUE.

Application for license for collection of income from foreign countries.

State of .....
County of .....

The undersigned, ..., ... of .....
(Name.) (Office.)
.....
(State name of person, firm, or corporation.)
being duly sworn according to law, declares that on and after the .....
day of ....., 191–,
{he }
{we }
intend.. to engage in the business of collecting foreign income payments of interest or dividends by means of coupons, checks, or bills of exchange. The aggregate amount of *annual* collections of such foreign income at the principal and branch offices is estimated at $.....

The location of the principal and branch offices is as follows:
Principal office .....
Branch offices .....
.....
(If a firm, state names of members) .....
.....

Said person, firm, or corporation is now engaged in business as.....
..... and desires to conduct the business of collecting foreign income at the above address or addresses, and hereby makes application for the license required to be secured by persons, firms, or corporations engaging in the business of collecting income from foreign countries under the provisions of paragraph E of Section II of the income-tax law of October 3, 1913, and I (we) hereby promise and pledge myself (ourselves) to comply strictly with the provisions of said law and the rules and regulations of the Treasury Department which have been or may hereafter be issued in respect to the collection and payment of such foreign income.

Signed.....
for.....
(Name of firm or corporation.)

Sworn to before me this ..... day of ..... 191–.
.....

The collector of internal revenue, upon receipt of such application, shall satisfy himeslf that the person, firm, or corporation making application is considered to be of good character and business standing and may require that he or they shall be able to show a financial rating in one or more of the recognized mercantile agencies of the United States, equal to at least one-tenth of the estimated amount of annual collections of foreign income as stated in the application.

The collector of internal revenue having thus satisfied himself of the business and financial reliability of the person, firm, or corporation making application for license, may issue the license without requiring a bond for the faithful performance of duty and compliance with the law and regulations.

In cases where the person, firm, or corporation shall fail to satisfy the collector of internal revenue of his or their business or financial reliability, the collector may refuse to issue license or may issue a license upon the applicant filing a surety bond satisfactory to the Commissioner of Internal Revenue for a penal sum equal to 2 per cent of the estimated amount of collections stated in the application, the minimum penal sum, however, to be $1,000, and the maximum not in excess of $100,000.

The bond, when required, shall be executed in duplicate, one of which shall be retained in the office of the Collector of Internal Revenue with whom the bond is filed, and the other shall be forwarded by the collector to the Commissioner of Internal Revenue at Washington, D. C.

The form of license to be issued shall be as follows:

Form 1010. No. ....

TREASURY DEPARTMENT.

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

LICENSE FOR COLLECTION OF FOREIGN INCOME.

....., located and doing business at ....., and engaged in the business of ....., having made application in accordance with the provisions of Section II of the act of October 3, 1913, and the regulations made in pursuance thereof, is hereby licensed to accept for collection coupons, checks, and bills of exchange for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations, and for the dividends upon stock of foreign corporations, foreign joint-stock companies or associations, or for-

eign insurance companies engaged in business in foreign countries, from ....., 191–, until revoked.

This license will not be valid until countersigned by the collector of internal revenue for the district in which issued.

.....

Countersigned: *Commissioner of Internal Revenue.*

.....

Collector.

..... Dist., ...

This license, made up in the form of bound books containing 50 each, with appropriate stubs, will be furnished in blank to the collectors of internal revenue, with the facsimile signature of the Commissioner of Internal Revenue thereon, and shall not be valid until countersigned by the collector of internal revenue by whom issued.

This license may be issued without cost to the persons to whom issued and shall continue in full force until revoked. Failure to give or renew the bond in cases where a bond is required will automatically revoke the license.

In cases where licenses are issued without bond, the collector shall, at stated yearly periods, inquire into and satisfy himself of the financial responsibility of all licensees.

When any person, firm, or corporation has branch offices and desires to collect said foreign interest or dividend income through said branch offices, the application for license or licenses shall be made (and bond furnished, when a bond is required) by the person, firm, or corporation through its principal office for its branch office or offices.

The bond in such cases shall be based on the total amount of such foreign business transacted by both the home office and its branch office or offices.

This application for licenses shall be made (and bond furnished when bond is required) to the collector of internal revenue for the district in which the principal or home office is located. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the Bureau of Internal Revenue are complied with to the satisfaction of the said collector, then said collector shall certify this fact to the collector of internal revenue for the district in which the branch office for which the license

is desired is located, and the collector to whom this certification is made shall thereupon issue a license as provided herein to such branch office.

No bond will be required in any case for the month of December, 1913, but the required license may be issued by collectors of internal revenue immediately upon receipt of the blank licenses in all cases where the applications for licenses which may have been filed shall have been duly approved.

The bond, if required, must be filed for the calendar year 1914 and for each calendar year thereafter.

All bonds must be renewed or new bonds furnished on or before January 1 of each successive year.

The applications for these licenses and the stubs of the licenses issued shall be retained and preserved in the office of the collectors of internal revenue.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved November 28, 1913.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1910.)

Income Tax.

Irrigation and reclamation assessment districts are not political subdivisions of the State nor are they public utilities exercising any essential governmental functions accruing to any State or Territory, within the meaning of the Federal income-tax law. Interest or income from bonds or other obligations of such districts is not exempt from the income tax.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., December 4, 1913.

Sir:

In reply to your letter dated November 14, 1913, with which was forwarded copies of the California State laws with respect to

the irrigation and reclamation districts of California, and in which you set forth at length the status of such irrigation and reclamation districts and in which the question is raised as to whether the interest derived from bonds issued under authority of this State to finance such irrigation and reclamation projects is subject to the income tax, you are informed as follows:

It appears that these irrigation and reclamation districts are created by special or general State laws which provide that their organization be perfected upon petition signed by the required number of holders of title, or evidence of title, to lands within such proposed districts, and when such districts are thus created, bonds to secure funds for the necessary improvements are issued and the interest charges thereon are met by taxes specifically levied upon the lands benefited by the improvements.

The vote necessary to secure the issue of bonds is confined to the owners of real property and neither the franchises, benefits nor burdens are extended to or imposed for the general welfare of all the people inhabiting such districts.

It would appear, therefore, that such districts are not created for the general welfare or as public utilities in the administration of government for the benefit of all the people.

The income-tax law provides "that in computing net income under this section, there shall be excluded the interest upon the obligations of a State or any political subdivision thereof." The law further provides:

> "There shall not be taxed under this section any income derived from any public utility or from the exercising of any essential governmental function, accruing to any State, Territory or the District of Columbia, or any political subdivision of a State, Territory or the District of Columbia."

The law also provides that in computing the net income of a person, no deduction shall be allowed for taxes assessed against local benefits, nor for any amount paid out for betterments made to increase the value of any property or estate.

The question at issue, therefore, would appear to depend entirely upon whether the irrigation and reclamation districts under consideration are political subdivisions of a State or whether they are simply assessment districts in which the assessment is made against local benefits, and whether, in the case of the districts under consideration, such districts are not created solely

for the purpose of local benefits and for the purpose of confining the expenses of such benefits to the particular persons who are benefited thereby.

In the case of Smith v. Howell, 60 N. J. L. 384, it is held that:

> "A political division to whose boundaries a general tax may be confined, is a division of the State with its inhabitants organized for the public advantage and not in the interest of particular individuals or classes, the chief design of which is the exercise of governmental functions, and to the electors residing within which is, to some extent, committed the power of local government."

In State v. Englewood Drainage, etc., Com'rs, 41 N. J. L. 154, it is held that such political subdivision

> "does not include a sewerage, drainage and water district under a board to be elected every five years by male and female resident landowners in fee, such board being invested with some control over a defined territory but having no concern with the inhabitants, such district being formed, not for public advantage, but in the interest of a particular class—the landowners, and the chief end of which is not the government of the persons and things within its territory, but mere land improvements at the expense of the land either by general tax or special assessment and the electors of which district has no voice whatever in its corporate affairs."

It would appear, therefore, that State laws providing for the taxation of certain districts created for a special purpose and for the special benefit of persons residing within, and owning real property within, certain prescribed limits does not create a subdivision of the State, nor are such laws intended to create a subdivision of the State, as that term is used in the Income Tax Law, but such districts are created under authority of the State simply to enable certain groups of citizens of the State to do that which they otherwise could not do without such legal sanction.

State agencies not existing for purely governmental purposes do not fall within any rule exempting the sovereign power of the State or any political subdivision thereof, from Federal taxation.

It is, therefore, held that such irrigation and reclamation as-

sessment districts are not political subdivisions of the State within the meaning of the Income Tax Law, nor are they public utilities exercising any essential governmental functions accruing to any State or Territory, and that the interest or income from the bonds or other obligations of such districts is not exempt from the income tax.

W. H. OSBORN, *Commissioner.*

Collector 6th District,
Los Angeles, Cal.

(T. D. 1911.)

Income Tax.

Supplemental regulations prescribing form of certificate which may be used by fiduciaries, when said fiduciaries do not desire to claim any exemption from having the normal tax of 1% withheld by the debtor organization at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 8, 1913.

Fiduciary agents may, if they so desire, use instead of form 1015, prescribed in supplemetnal regulations, Treasury Decision 1906, of November 28, 1913, a certificate in substantially the following form:

(Form No. 1019.)

Form of certificate to be filed with debtor or withholding agents by fiduciaries when not claiming any exemption. As an alternative to the filing of Form No. 1015 in which exemption is claimed.

The following form of certificate may be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source as an alternative to the filing of Form No. 1015.

I (we) do solemnly declare that I (we) .....
(Name fiduciary.)

am (are) the duly authorized ..... for
(Indicate in what capacity acting.)
the beneficiaries of the estate or trust of ..... which estate or trust is entitled to the income from $..... bonds of the denominations of $ ..... each, Nos. .....
.....
.....
.....
of the .....
(Give name of debtor.)
known as .....
(Describe the particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due ....., 191.., amounting to $ ....., or upon which there has matured ....., 191.., $ ..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued ....., 191.., $ ..... of income.

Acting for and in the capacity herein stated, I hereby declare that I (we) do not now claim any exemption from having the normal tax of 1% withheld from said income by the debtor at the source.

.....: .....
(Name.) (Capacity in which acting.)
Date: ....., 191—. .....
(Address.)

When the fiduciary uses the above form of certificate the Debtor organization shall be the *source* for the deduction and withholding of the normal tax of 1%, as required by regulations, and fiduciaries receiving the income described in the said certificate from which the 1% normal tax has been withheld shall not be required to again deduct and withhold the normal tax of 1% upon the said income.

W. H. Osborn, *Commissioner.*

Approved:
W. G. Mc Adoo,
Secretary.

(T. D. 1914.)

Income Tax.

Supplemental regulations prescribing how itemized monthly list returns and annual list returns of all coupon and registered interest payments on which the normal tax of one per cent was withheld shall be made, pursuant to regulations for the administration of section 2, of the act of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 9, 1913.

Debtors or withholding agents are required by regulations made in pursuance to section 2, act of October 3, 1913, to make both a monthly and an annual list return.

The required monthly list return shall give a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld, and shall be made in substantially the following form:

(Form 1012.)

United States Internal Revenue—Monthly list return of amount of normal income tax withheld at the source.

Filed by .....
(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of one per cent has been deducted and withheld during the preceding month.

I (we) ..... of .....
(Name.) (State address in full.)
the duly authorized withholding agent of .....
(State name of debtor organization.)
....., located at .....
(Address in full.)

do solemnly swear (or affirm) that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of one per cent was deducted and withheld at the time of payment or for which it is liable as withholding agent, during the month of ....., 191.., on the ..... bonds (or other obligations) of
(Describe the particular issue of bonds.)
the ..... and there are herewith inclosed all
(Name of debtor organization.)
certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $ ..... of the bonds described.

Name.	Address in full.	Amount of income	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total for month					.....
Amount of tax remitted herewith (if any) to collector.....					.....

To.....
Collector.
...District of...
.....
(Address.)

Sworn to and subscribed
before me this .....
day of .....191—
.....

Signed:
.....
.....
(Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the collector of internal revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents authorized by regulations that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Form 1012*a*.—Includes all heading, Form 1012, but omits bottom.

Form 1012*b*.—With box heading, Form 1012, omits head and tail.

Form 1012*c*.—Omits heading, Form 1012, includes tail.

Form 1012*d*, when necessary to be used, shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent, and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same as fully as if each list attached to the summary was signed and sworn to separately.

The said Form 1012*d* shall be in substantially the following form:

(Form 1012*d*.)

United States Internal Revenue—Summary of monthly list return of amount of normal income tax withheld at the source.

Filed by .....

(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies, or associations, and insurance companies, on which the normal tax of one per cent has been deducted and withheld during the preceding month.

I (we) ..... of .....

(Name.) (State address in full.)

the duly authorized withholding agent of .....

(State name of debtor organization.)

located at .....

(Address in full.)

do solemnly swear (or affirm) that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of one per cent was deducted and withheld at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191.., on bonds (or other similar obligations) of the .....

(Name of debtor organization.)

as fully set forth in detail on lists attached hereto, said lists, Form 1012, and this summary constituting the *monthly list return of normal income tax withheld at the souree,* as required by the regulations; and that there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described, and that said withholding agent has paid no coupons or orders for registered interest not accompanied by the certificates of ownership as required by Treasury regulations.

Description of obligation.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Total for month	.....	.....	.....	.....

Amount of tax remitted herewith (if any) to collector.....

To..... Collector.	Sworn to and subscribed	Signed:
	before me this	.....
...District of...	day of .....191—	.....
.....	.....	.....
(Address.)		(Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the collector of internal revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name, address, and the number of the substitutes certificate, of the collecting agent in lieu of the name and address of the owner of the bonds.

The annual list return to be made by debtors or withholding agents of the normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations shall be made on or before March 1 of each calendar year and in substantially the following form:

(Form 1013.)

United States Internal Revenue.—Annual list return of amount of normal income tax withheld at the source. From interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, or associations, and insurance companies.

Filed by .....
(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before March 1. showing the totals of each monthly return on Form 1012 and their aggregate totals for the preceding calendar year.

I (we) ..... of .....
(Name.) (State address in full.)
the duly authorized withholding agent of .....
(State name of debtor organization.)
located at .....
(State address in full.)
do solemnly swear (or affirm) that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization or for which it is

liable as withholding agent as reported on Form 1012 and their aggregate totals for the year ended December 31, 191..:

Month	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.	Amount of tax remitted to collector.	Balance of tax due.
January.....	$.....	$.....	$.....	$.....	$.....	$.....
February	.....	.....	.....	.....	.....	.....
March	.....	.....	.....	.....	.....	.....
April	.....	.....	.....	.....	.....	.....
May	.....	.....	.....	.....	.....	.....
June	.....	.....	.....	.....	.....	.....
July	.....	.....	.....	.....	.....	.....
August	.....	.....	.....	.....	.....	.....
September	.....	.....	.....	.....	.....	.....
October	.....	.....	.....	.....	.....	.....
November	.....	.....	.....	.....	.....	.....
December	.....	.....	.....	.....	.....	.....
Aggregate total for year.....	.....	.....	.....	.....	.....	.....

To..... Sworn to and subscribed
(Collector.)
before me this..... Signed:
.....district of..... day of .....191– .....
....
(Address.) (Capacity in which acting.)

The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required, in making an annual list return of the tax

withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies, or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds. Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent *when the owners of the bonds are not subject to having the normal tax withheld at the source,* but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for his or its district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received by him or it.

All forms of monthly and annual list returns herein provided for shall be 10½ inches wide and 16 inches from top to bottom.

W. H. Osborn,
Commissioner of Internal Revenue.

Approved, December 9, 1913.

W. G. McAdoo,
Secretary of the Treasury.

(T. D. 1916.)

Income tax.

Regulations prescribing form of certificate to be furnished by foreign organizations engaged in business in the United States and subject to the income tax on interest or other income collectible at the source.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 5, 1913.

Foreign organizations engaged in business within the United States are subject to the normal tax of one per centum per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of its income withheld by a debtor or withholding agent.

The certificate to be furnished by foreign organizations engaged in business in the United States shall be in substantially the following form:

(Form 1018.)

Certificate to be furnished by foreign organizations engaged in business in the United States.

I, ... the ..... of the
(Give name.) (Give official position.)
....., a ..... of
(Name of organization.) (Character of organization.)
....., located at .....
(Country.) (Postoffice address.)
do solemnly declare that said ..... is a foreign
(Give name of organization.)
organization, engaged in business in the United States, and is the owner of $..... bonds of the denomination of $..... each, Nos. .....
.....
of the .....known as .....
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due .....
191–, amounting to $....., or upon which there matured .....,
191–, $..... of registered interest, or is the owner of .....,
(Property or investments.)
upon which there was accrued ....., 191–, $..... of income.

Under the provisions of the Income Tax Law of October 3, 1913, the said organization is subject to the normal tax of one per centum per annum upon the amount of net income accruing from business transacted and capital invested within the United States, for which tax it will make its return in due course, but it hereby claims exemption from having the said normal tax of one per cent on said income withheld at the source.

Date..... Name .....

Address ....

(Dist. office.) (Official position.)

Of.....

(Name of organization.)

W. H. OSBORN, *Commissioner.*

Approved:

W. G. MCADOO,

Secretary of the Treasury.

(T. D. 1920.)

Income tax.

Income tax ruling that certificates of ownership heretofore executed, or which may hereafter be executed, by the owners of bonds, etc., or their duly authorized agents, need not be signed with the full Christian name of the owner or agent, but the said owner, or agent, may use his ordinary or usual business signature.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 20, 1913.

To collectors of internal revenue:

Certificates of ownership, heretofore executed by the owners of bonds, etc., or their duly authorized agents, in compliance with the income tax regulations and signed either with the Christian name or the ordinary or usual business signature, and giving the full address of the owner, shall be accepted by debtor organizations or their duly authorized withholding agents.

Hereafter, it will not be required that ownership certificates be signed with the full Christian names of the owners by the

owners, or their duly authorized agents, but the said owners or agents may use their ordinary or usual business signatures, provided it identifies them and is accompanied by their complete address.

W. H. OSBORN,
Commissioner.

Approved:
W. G. MCADOO,
Secretary.

[Released for publication December 22, 1913.]

(T. D. 1922.)

Income tax.

Collection at the source of income tax from certain municipal district or local bonds and other obligations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 24, 1913.

Until January 15, 1914, and thereafter until further instructions are issued, the income derived in the shape of interest from the obligations, general or special, of any State, or of any County, Municipality, or taxing District therein, shall be exempt from the collection of the income tax at the source, whether the payment of such obligation is provided for by general or local taxation, or out of a general, special or separate fund.

Any regulation or ruling of the Bureau of Internal Revenue in conflict herewith is hereby suspended as above provided.

W. H. OSBORN,
Commissioner.

Approved:
W. G. MCADOO,
Secretary.

(COMMENT: This ruling modifies T. D. 1892, page 53, and T. D. 1910, page 77.)

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PREPARED BY EMMA FREAM.

See also Annotated Statute and Digest.

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